

# ENDANGERED SPECIES ACT AMENDMENTS OF 1993

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Y 4. P 96/10: S. HRG. 103-  
768/PT. 1

Endangered Species Act Amendments o...

## HEARING BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

**S. 921**

A BILL TO REAUTHORIZE AND AMEND THE ENDANGERED SPECIES ACT  
FOR THE CONSERVATION OF THREATENED AND ENDANGERED SPE-  
CIES, AND FOR OTHER PURPOSES

JULY 23, 1994—RONAN, MT

PART 1

Printed for the use of the Committee on Environment and Public Works



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# REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

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SATURDAY, JULY 23, 1994

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Ronan, MT.*

The committee met, pursuant to notice, at 9:30 a.m. at Ronan High School, Ronan, Montana, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senator Baucus.

Senator BAUCUS. The hearing will come to order.

Good morning, everybody.

A VOICE. Extinction is forever.

Senator BAUCUS. One thing I can say is I really appreciate the spirit here.

It's a beautiful day. We should be out fishing. We should be out in the woods.

A VOICE. There's no fish left.

Senator BAUCUS. We're working on that.

## OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. I appreciate everybody showing up here so we can work out some of the problems that all of us face in implementing the Endangered Species Act.

The reason I'm holding this hearing today in Ronan is that we've been holding hearings in Helena and in some of the major towns in our State, so I figured that Ronan, the heart of the beauty of our State, and a part of some of the conflict regarding the Endangered Species Act, would be a very good place to hold a hearing. I can tell that that decision wasn't too far off the mark based on the attendance here. Again, I appreciate that.

I believe strongly that the Act has to be changed in many ways. In working to change the Act, I begin with a few basic principles. First, we should list and delist species because of science, not because of emotion. Also, the Feds must work with States, they must work with towns and they must work with private landowners; they've not done this very well in the past. Next, we should emphasize incentives rather than sanctions and prevention more than recovery. When recovery plans become necessary—and they will become necessary on occasion—they must consider jobs and families as well as animals and fish.

These are not very complicated ideas. They're pretty simple. They are basic common sense, and that's why groups like the West-

ern Governors' Association have already endorsed the bill that I've introduced. The Western Governors' Association has endorsed the bill because I wrote the bill in a way to address the concerns of western States. So if we work together, look for the common ground and give ordinary people a voice, we're going to get a much better result.

On the other hand, when bureaucrats sit down in Washington, as often has happened, without talking to State government and without talking to the people on the ground who live with the Act, we get a bad result, and that's often happened.

Salmon protection is a perfect example. Last fall some people in Washington came up with a plan for saving salmon that relied far too heavily on water discharges from Hungry Horse and Kootenai. It would have just about bled those lakes dry. It would have threatened bull trout, and it would have threatened 700 jobs at the Columbia Falls Aluminum Company.

Marc Racicot and I said, Enough. That's unacceptable, and we got Montana back into the plan. Together we made sure the salmon plan will treat Montanans fairly, because we stood together, State and Federal Government, at least Montana State and Federal Government, and offered a common sense alternative, a plan that makes sense. Montana will have some responsibility in this, but will not have to bear all of it.

When the government emphasizes prevention and works with people, we all benefit, and there's a good example nearby. About once a month I get home and spend an entire day, a full day shift, at a regular Montana job. I call them work days. I pump gas, bag groceries. I've worked in saw mills, on the green chain, in mines, driven a beer truck. I've even driven a roller on highway construction just outside of Whitefish.

Last February I spent a day working on the Foote ranch near Ovando, a few miles past Missoula down near 200. The ranch has a few head of sheep, a few draft horses. It also has a stream that is a spawning area for bull trout. Jeff Foote, the landowner, wants to step in early and do what needs to be done to prevent a listing. Local Fish and Wildlife Service authorities are part of the Blackfoot Challenge. They're helping, as they should, not by handing out forms to fill out and giving orders but by coming down to the ranch and offering advice. Then, everybody who lives in and has an interest in the Big Blackfoot, one day, altogether, we were hauling rocks and planting willows, picking up shovels and moving some dirt to find a solution.

It was a sunny day. The water was just above freezing. We got in a good day's work. We deepened and narrowed the channel. We planted some willows to stop siltation for the banks, built some deep pools for fish to lie in on hot summer days and moved one part of the channel to avoid contamination from mud and manure. This restores the stream to a more natural state, protects the habitat for bull trout and may help Montana ranchers avoid a listing. If efforts like this succeed, we'll have given the country a good example. We'll have thought ahead, acted fast and made sure species are not listed, and we'll have avoided a whole lot of regulation, a whole lot of litigation and wrangling.



Probably one of the best examples of all may be one set by two Montana State Representatives here today, Dick Knox of Winifred and Emily Swanson of Bozeman. Now, on the surface, Dick and Emily don't seem to have much in common. One's a Republican. One's a Democrat. One's from Eastern Montana, the other from Western Montana. One's a rancher, the other one active in the Montana environmental movement. But they share something more important. They're both Montanans. Montanans who want what is best for our land and for our people. That is why they have brought together a group of Montanans which reflect all sides of the Endangered Species Act debate in an effort to reach a consensus.

The group is diverse. Its members have a lot of different opinions, but what they have in common is more important. They share good faith and commitment to reach the solution that is best for our State.

I'm hoping this morning's hearing will bring us much closer to that goal. I know the Act is an issue on which passions run high, but with luck we'll save the real shouting and the real excitement for Pioneer Week, upcoming, and I encourage all of us to get ahead, roll up our sleeves, and let's see if we can make some significant progress.

The bill I've introduced is a start. It's not the final solution, but it's a good start at trying to solve a lot of problems we have. At today's hearing I know people are going to suggest some new ideas, some refinements, that I'll take back when my committee, the Environmental and Public Works Committee, begins to redraft and change this legislation.

Before I begin, though, I'd like to outline a few ground rules. I'm going to ask each person who speaks to restrict their statements to five minutes. There's some timing lights up here. When the green light is on, full speed ahead. When the yellow light is on, think about wrapping it up. When the red light comes on, I urge you to find a way to wrap up, so everybody gets a chance to speak.

After each panelist has spoken for five minutes, I'll ask some questions. The last panel will be restricted to three minutes of oral testimony due to the large number of people on that panel.

After that, it's going to be an open mike for people who want to speak. I'd ask them to limit their remarks to two minutes, and, time permitting, hope to hear all who wish to speak.

I'd like to thank Dick Gallagher, Nancy Williams, and Bob Bach for their tremendous help in helping put this hearing together. Dick has been terrific, as have Nancy and Bob. It takes a lot of work to open up the school on Saturday morning and put all this together. Let's give a great round of applause for the local Ronan folks.

Someone else I'd like to thank is our reporter here for the hearing, Jolene Asa. It's tough being a reporter. She's got to type fast, let alone try to understand what we're saying.

Okay. I'd asked Senator Conrad Burns if he wanted to be here. He decided his schedule could not allow him to make it, but Pat Joyce is here, and so what I'd like to do is have Pat come to the table.

I guess, Pat, you have a statement you want to read for Conrad. We'll start with your statement and I'd ask you to hold yourself at five minutes, too. Thank you.

**STATEMENT OF PAT JOYCE, ON BEHALF OF HON. CONRAD BURNS, U.S. SENATOR FROM THE STATE OF MONTANA**

Ms. JOYCE. Good morning. Thank you, Senator Baucus, for allowing us to join you here today. It's a pleasure to be able to read Senator Burns' statement this morning. We'll read quickly:

I'd like to thank you for the opportunity to present this statement to the committee. I would like to express my regrets to those in attendance at the hearing that because of a prior commitment and not being able to get out last night, I was not able to be here.

Please be assured that despite my absence at the subject of this hearing, the Endangered Species Act is of utmost importance to me. I believe that this hearing presents a long overdue opportunity for Montanans to express the tremendous impact that this Act is having on their lives and their livelihoods.

Mr. Chairman, I am deeply concerned with the threats imposed by the Endangered Species Act to Montana's natural resource-based economy. I am concerned with the future of Montanans who depend on those natural resource-based jobs to support their families and their communities.

Since 1990, 1500 good paying family jobs have been lost as a result of mine and mill closings in Montana. These lost jobs are only a fraction of the total jobs directly and indirectly connected to our ability to responsibly utilize our State's natural resources. The ESA has not been the only reason for these lost jobs, but it has been a part of the problem.

Mr. Chairman, I don't think Montana can afford to sacrifice any more of our good paying jobs, natural resource jobs. Our ability to protect many of those jobs will depend on our success in making meaningful changes to the ESA, a law that sometimes depends on questionable science to justify grassroots approaches to protect a species at any cost, regardless of the consequences.

Mr. Chairman, the ESA is out of kilter. Thousands of jobs have been lost or threatened for habitat protection of the spotted owl, a species, it turns out, that may not be nearly as threatened as it was portrayed. The owl, it seems, is doing quite well in some areas outside of the old growth forests.

This year the Department of Interior unveiled another weapon in their War on the West and announced that they will spend \$6.5 million to release wolves in Yellowstone Park and Central Idaho. Mr. Chairman, this is an outrage. It is estimated by wildlife experts that there are already about 75,000 wolves in North America. There are less than 30,000 ranchers in Montana and Wyoming. You tell me who is really the endangered species.

Do you know what a rancher can do when a wolf or grizzly bear attacks his livestock? The answer is, very little. He can try to secure the wolf or the bear, or he can call the Federal agencies and ask them to help. Now, the Federal agencies don't exactly have a great reputation for protecting livestock. In fact, I'd say that they are downright arrogant and insensitive.

At the press conference in Washington to unveil the wolf introduction program, U.S. Fish and Wildlife Service officials admitted that the wolves they released would probably kill up to 50 cattle and 200 sheep per year, but they call these losses insignificant. Insignificant to a Federal bureaucrat, but not if you're the rancher who owns the cattle or the sheep.

In the last few months, the Federal agencies in Montana gave ranchers another option. You can call it an ultimatum. They said that whenever conflicts occur between the wolves or bears and livestock the rancher should remove his livestock. Once again, removing your livestock doesn't seem like a big deal unless it's your livestock, and you don't have anywhere to move it. It's no big deal unless your family depends on that grazing allotment for their livelihood.

Mr. Chairman, besides the threat posed to Montana's mining, timber and agricultural industries, ESA threatens our use of a resource that is precious to us all, water. In May of this year the National Marine Fishery Service overruled its own agency biologists and ordered the Corps of Engineers to spill huge volumes of water over the dams in Columbia and Snake River Basins to flush endangered juvenile salmon to the sea. This controversial experiment has cost rate payers, taxpayers and recreationalists millions, perhaps billions of dollars. Most scientists would agree the action will result in negligible additional numbers of adult salmon returning to



spawning grounds. It hurts the actual salmon numbers because these spills are resulting in higher death losses for juvenile fish.

It has been estimated that costs may be more than \$1 million for additional adult salmon to return to the spawning grounds as a result of a spill. Worst of all, the spill has drained Montana of our water, of our most important tool for protecting our own fish, including the bull trout, the species that has been considered for listing as endangered or threatened itself.

The emergency spill ordered by the NMFS is not based on science. It's based on political science and the requirements of the ESA. It is based upon the perceived need for immediate, dramatic and drastic action to do something to save salmon regardless of the results. Mr. Chairman, last Thursday other Senators and I called upon Secretary of Commerce Ron Brown to provide adequate technical and defensible justification for their action before any spills are requested.

These are just a few examples of why the ESA is broken and why we need to fix it. Yes, endangered species that are truly threatened or endangered need to be protected, but we do need—but we need to do a better job balancing the needs of people with the needs of species. We need to better use science in determining what species should be protected and how we should most effectively protect them. We need to consider and try to minimize the economic impact of recovery plans, and we need to fairly compensate private property owners when they are deprived of economic use of their property because of the ESA.

Sure, there are endangered species, but Congress needs to address the human element too. There are also endangered small mills, mining operations and farms and ranches. There are a lot of hard-working folks trying to support their families, their churches, their grocery stores, their fire departments and their schools who are depending on you and me and other members of Congress to build some of these into the Endangered Species Act.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much. I appreciate that. Thank you, Pat, for that statement.

Now I'd like to hear from our panel. We are first going to hear from Pat Graham, who is the director of the Montana Department of Fish, Wildlife and Parks. I've got to tell you, Pat's done a great job. He's back in Washington quite frequently, comes to our office and talks to us, and I think we're lucky to have someone of Pat's ability representing us in the State Fish, Wildlife and Parks.

I also want to take this opportunity to publicly acknowledge the tremendous help of our Governor. Governor Racicot and I have jointly sent letters to the BPA, to the various agencies involved, and it's been, I think, a good example of just teamwork to help address the excessive spill levels at Hungry Horse and Koocanusa.

I want to just tell you, Pat, how much I appreciate your efforts and that of the Governor and also the Governor's efforts in working with the Western Governors to endorse this process as we go ahead and try to get this passed.

We then will hear, after Pat, from Dick Knox, one of the two I mentioned earlier, a Republican rancher from Eastern Montana. Dick has worked very hard with Emily, the Democratic environmentalist from Western Montana.

I've got to tell you. This is not just smoke. These people have worked very, very hard. They've put together a large group of people and held many meetings. At first, they didn't think this was going to amount to much, but it has amounted to a lot, and I'm very excited, that your group, Dick and Emily, as well as Pat and Rhonda, are going to come up with suggestions that we can incorporate as amendments into the bill we have come up with and pass it in Congress.

Last but not least, by any stretch of the imagination, is Rhonda Swaney, who is the vice-chairman of the Flathead Nation, and she

is going to give us a tribal perspective on the Endangered Species Act.

Let's begin right now, Pat, with you. Again, I urge you to keep it to five minutes.

# **STATEMENT OF MR. PAT GRAHAM, MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**

Mr. GRAHAM. Thank you, Senator Baucus.

Governor Racicot welcomes this field hearing to Montana and regrets that scheduling conflicts prevent his participation here this morning. I appreciate the opportunity to appear on his behalf and present these remarks for him.

Governor Racicot, as you know, has firsthand experience with the Endangered Species Act. Whether that experience has come as a result of defending Montana's interests from downstream States in both the Columbia and Missouri river systems or arguing the State's case for endangered grizzly bear management, the Governor's involvement with the ESA has been detailed, but at times, frustrating.

Montana has actively promoted discussion about issues that need addressing when Congress reauthorizes the Endangered Species Act. Our goal in these discussions has been on wavering, that is, to refocus the Act to encourage and support a new management partnership between State fish/wildlife agencies, as well, to increase incentives to get actively involved in preventing the need for listing species and providing incentives for private landowners.

Montana was one of the principal authors of the Western Governors' Association resolution on reauthorization and the recent National Governors' Association policy statement on reauthorization. We appreciate your attention to these concerns and your inclusion of many of them in Senate Bill 921.

You might wonder why in the world would a State like Montana want a more inclusive role in the often contentious arena of endangered species management. We seek that role because of the vital link agencies like ours maintain between the ecosystems and the communities of Montana. Though often viewed in conflict, we believe sustainable ecosystems and sustainable communities are two sides of one coin.

Our goal of sustainable ecosystems and sustainable communities is synonymous with the proposals for enhancing State authority and more flexibility in the Act with increased incentives, particularly for landowners.

We want to acknowledge, as you have, the work of groups that are coming together and trying to help resolve these issues, particularly Representative Knox and Representative Swanson. We also want to acknowledge the role of the Indian nations in this arena.

Specifically, I'd like to address a few proposals that are contained in our written testimony. We encourage the committee to utilize the National Governors' Association policy recommendations on delegation of State authority. While we were assured that Senate Bill 921 incorporated the Western Governors' recommendations, critics of some of the language in the National Governors' Association proposal gave rise to some doubts as to whether or not the lan-

guage in Senate Bill 921 would actually accomplish what was intended. Specifically, the intent is to provide these States the option of ESA leadership which can be exercised only within standards adopted by the Secretary.

The second area of concern is the consideration of an expression of congressional intent that Federal land and water management agencies work out cooperative agreements with State agencies to allow for delisting of species or, better yet, to prevent the need for listing.

Questions are often raised about how a State could insure implementation by Federal agencies of measures needed to keep a recovered species viable. Incorporating these measures into forest plans or reservoir operation plans is one step.

We do not expect, nor do we anticipate, that it's feasible to grant State agencies control over Federal land management decisions. But, for purposes of delisting species in the west where in some instances 90 percent of land is federally controlled, cooperative agreements may be necessary to provide oversight by the State management agencies. A consultation process developed through a Memorandum of Agreement could be one way. Another approach would be for the committee to consider incorporation into Senate Bill 921, the authorization for jointly funded cooperative positions between State and Federal agencies to increase a cross-jurisdictional approach.

In addition, we recommend clearer mandates in Senate Bill 921 which make vital the distinction the Congress originally intended between the endangered and threatened classifications. In practical terms, the Federal agencies imposed regulations for threatened species and for endangered species that are nearly indistinguishable. There should be greater program flexibility and a broader range of permissible actions in developing a creative conservation program for threatened species. This is the kind of real incentive that can promote action without significant Federal costs.

We urge the committee as well to provide the Federal fish and wildlife agencies, and also States, with the flexibility to develop alternatives or alternative types of habitat control plans which accomplish the same goals, but which are more applicable to the kind of land ownership and use patterns in rural States like Montana and, along with that, greater regulatory certainty for those private landowners who enter into habitat conservation plans.

I would conclude with the recognition that today we are challenged, all of us, to transform loosely spent buzz words like "ecosystem management" into concepts we can all understand and use. We are further challenged to forge the partnerships necessary to recover endangered species and, better yet, prevent their demise in the first place. Further, we are challenged to develop a workable relationship between private land and public wildlife.

Community is where the successful interface between land management and wildlife management begins and ends. But over the years, we have tended to stray towards special interests and drift away from community. We thought in simple terms and managed forestability, but life in communities is complex and very dynamic. Thus, the challenge of maintaining communities is also a challenge of developing communication.



On behalf of the Governor, I want to thank you, Senator Baucus, and members of the committee, for holding this hearing in Montana. If you have any questions about my presentation, I would be pleased to answer them.

Senator BAUCUS. Thank you very much, Pat.

I talked to the Governor two or three weeks ago, and I told him I was going to hold this hearing. He was very excited about it. He said he wanted to be here, but he had made a very strong commitment to his family, had alternative plans this weekend, and so we're glad you are here filling his place. Thank you.

Dick?

**STATEMENT OF DICK KNOX, STATE REPRESENTATIVE,  
WINIFRED, MT**

Mr. KNOX. Thank you, Senator.

For the record, my name is Dick Knox. I am a State Representative representing District 93. That's a large part of Central Montana.

I stand here today as a co-chairman, with Representative Emily Swanson of Bozeman, of a group of Montanans working together on ways to improve the Endangered Species Act. I think the composition of this group is very interesting and somewhat unique. It is comprised in part of State legislators, five Republicans and five Democrats from both the House and Senate. The balance of the group is made up of Montanans from environmental groups and Montanans from resource-oriented groups.

These Montanans come literally from all portions of the State, from Sidney to Hungry Horse, from North, Central and Southern Montana to all points in between. To say that this is a diverse group could be called an understatement. We have people from the Montana Wildlife Federation, the Audubon Society, the Montana Wilderness Association, the Greater Yellowstone Coalition. In addition, we have a wildlife biologist from the University of Montana. From the resource side, we have people from the Montana Stock Growers, the oil and gas industry, the Montana Farm Bureau, WIFE (Women Involved in Farm Economics), and, starting with our next meeting, a representative from the woods products industry.

The first decisions that Representative Swanson and I made as cochairs working together dealt with the organizations that might possibly participate, plus the positions that the individuals from the various organizations held within their organizational structure. We felt that because of the highly contentious nature of the issues we would confront and because of some degree of polarization between the environmental community and resource-based groups that we would not include the executive directors of the various organizations in our working group.

Now, let me be very clear. This is not in any way a reflection on those individuals, many of whom are here today. They have, without exception, been cooperative and helpful. We simply felt this was a reality we had to face if our group was going to function.

We asked these people to recommend individuals from within their organizations that were not only knowledgeable but had the ability to work in an extremely diverse group on contentious issues.

These recommendations were made. We contacted them, and after listening to the rationale regarding the makeup of the group and the purpose of the group, they agreed to participate in a process we all knew was going to be difficult at best.

The group of legislators from both sides of the aisle possess the same qualifications as the people from the organizations. They are very diverse in their backgrounds and experience and, because of this, represent virtually all of the interest groups I previously mentioned. In addition, they have the experience needed in evaluating and crafting legislation and amendments to legislation.

I am very pleased to report that after a somewhat tense and apprehensive start, the group has achieved a great deal of mutual trust and confidence in one another. This does not mean that there is mutual agreement on all the issues. Far from it. What it does mean is that, after four difficult and strenuous sessions, we have agreed to focus on those areas where there is a possibility of consensus.

Those are: Number one, greater State involvement in the process, particularly in the preparation and implementation of recovery plans. We are also discussing ways in which the Senate might be proactive in preventing the necessity for listing, thereby possibly avoiding the heavy economic disruptions sometimes caused by the listing of a species as endangered; two, criteria for the creation and implementation of recovery plans; three, criteria to improve the delisting process; four, ways to provide incentives to States to conserve threatened and endangered species.

At this point in my testimony, I must emphasize one of the criteria under which the group is operating. We feel this is very important. The committee members represent themselves and do not represent the views of any organization. To carry this fact to a logical conclusion, any proposals to amend the Act that come from this group are coming from a diverse group of Montanans that are acting independently from any interest group or organization.

We are operating with definite ground rules. They include: Number one, the committee will make decisions by consensus. Number two, seeking consensus does not mean that members are expected to compromise their values or adopt positions adverse to their interests. Three, the intent of the committee is to develop our recommendations to improve the structure and the implementation of the Act and not to seek significant changes in either the purpose or the scope of the Act. Four, all meetings of the committee and any interim task force are open to the public.

One additional fact, and then I will close. The committee has unanimously agreed to focus their efforts on the Baucus-Chafee Bill, Senate Bill 921. Therefore, proposals or concepts that the group can reach consensus on will be drafted as proposed amendments to Senate Bill 921.

In closing, I share with a great many Montanans a concern that the ESA is inflexible and that in some situations it causes unnecessary economic hardship. I believe that the Act can be amended to alleviate some of these problems and still maintain its primary function, the preservation and rehabilitation of threatened and endangered species.

The grizzly bear in Montana, I personally believe, is a classic example. To be specific, delisting as a function of the Act is not working properly. The grizzly was listed in July of 1975, and a recovery population goal of 560 was set. In 1982, 12 years ago, population estimates ranged from 440 to 680. If you average these numbers, you have 560. The bear was not delisted. In 1986, eight years ago, the population estimates were 549 to 813 for an average of 681. Again, the grizzly was not delisted, and no compelling reason was given. Instead, new criteria was added to the recovery plan.

A legitimate question can be asked. Why do we not now have enough grizzly to ensure the future welfare of the species, and why must Montana endure the stringent controls on resource management and development that are in place throughout the grizzly's range, which includes much of Northwest Montana and the East Slope of the Rockies?

This example is of great concern to many Montanans. In addition, Montana has a growing wolf population that is protected under the Act, recovery goals have been set and the potential range of the wolf is huge. The possibility of long-term economic disruption and hardship is real, unless the delisting criteria is improved.

Thank you very much, Senator.

Senator BAUCUS. Thank you, Dick.

Emily.

#### **STATEMENT OF EMILY SWANSON, STATE REPRESENTATIVE, BOZEMAN, MT**

Ms. SWANSON. Senator Baucus, thank you for the opportunity to be here. I appreciate the opportunity to address you with a status report on the progress of this committee that Representative Dick Knox and I have been co-chairing. We're calling ourselves the Endangered Species Act Reauthorization Committee.

Representative Knox has described for you how the committee was formed and the process we have followed. The committee has worked hard to build trust among members and find common ground which we believe will help this complex legislation work better for the American people as well as for the species we strive to conserve. Given the diversity of people involved in the committee, we are enthused that we have come as far as we have in finding agreement. We believe our process holds great promise for healing some of the polarization which has occurred around this legislation.

The committee is working on specific amendments to Senate Bill 921, the Baucus-Chafee Bill. As Dick mentioned, we are developing recommendations to improve the structure and implementation of the ESA, not to seek significant changes in either the purpose or policies of the Act.

The committee has agreed on the following concepts, some of which are in the existing Act or in Senate Bill 921, and some of which we have amendments addressing. Firstly, we all agree that the Endangered Species Act, as described in Section 2 of the Act, has a sound purpose but that it needs improvement in several areas. Secondly, we agree that States should have the opportunity to assume a larger role in implementation of the ESA. Additionally, both State and Federal Government should be more pro-active in



preventing plant and animal species from needing to be listed. Third, listing and delisting of species as threatened or endangered should be based solely on the best scientific and commercial data available. Scientific peer review panels should be composed only of scientific experts.

I put in a little aside here. I was pleased in your preparatory comments that many of these concepts are ones endorsed already in Senate Bill 921, and we're glad to be able to endorse your work there.

Fourth, we feel that critical habitat designation should consider economic impacts in addition to scientific and commercial data. Fifth, recovery plans should consider scientific information plus social and economic impacts, and, sixth, we believe the delisting process needs clarification and greater certainty.

The committee is uncertain—and I say this with deference to Rhonda here—about how tribal governments relate to the Endangered Species Act, so we really have not—deliberately have not included any reference to tribal governments in our comments, although we recognize that there is significant work that needs to be done there.

The committee also recognizes that administrative changes are in the process from the Interior and Commerce Departments and that they address some of our concerns, but it's our feeling that these concerns need legislative direction rather than relying on administrative policies which may change with a different administration.

Our first amendment provides opportunities for States to assume a larger role or lead role in developing and implementing recovery plans. Conceptually, what we're proposing is that the Secretary of Interior be directed to develop specific standards and criteria through formal rulemaking under which a State could assume the lead in preparing and implementing recovery plans for individual or groups of species. The secretary would have approval authority of a State's assumption of leadership in recovery plans. The secretary would have approval authority over the recovery plan and would monitor implementation of the recovery plan and could revoke a State's leadership if implementation was not adequately promoting the conservation of the species.

Our second amendment, we'd like to clarify what type of criteria should be used to delist a species, and we suggest wording changes in a section of the Senate bill which clarifies that species should be delisted only when habitat and population goals have been achieved.

Thirdly, we'd like to clarify parameters for monitoring a delisted species. We're suggesting, again, wording changes, and we have those specifics that we will be submitting to you, changes so that we ensure that monitoring criteria are those used in the recovery plan, including habitat and population goals.

Our fourth amendment would ensure that approved recovery plans are binding unless there is adequate evidence to modify the plans. I think one of the things that you'll probably hear today is the problem with what people see as a moving target. We would like to provide greater certainty to the recovery process, but we're wary of creating new areas for litigation, so we're suggesting some

language addition that says, "Improved recovery plans shall not be changed unless substantial scientific, commercial, social and economic data warrants revisions."

Fifth, we would like to urge the Federal agencies to be more diligent in the implementation of recovery plans while still maintaining flexibility within other programs so the most effective agency plan is implemented to reduce the need to list additional species.

In our sixth amendment, we try to address the need for incentives to States to conserve threatened species and endangered species. Conceptually, the committee supports some of the concepts of Section 14 of the Studds bill entitled "Priority for Projects that Assist Endangered Species in Awarding Grants Under Other Federal Programs". We're concerned that funding for the Endangered Species Act work is inadequate, but we're uncertain about diverting money that is already in existing programs into ESA work. Particularly, we don't want to see State matching monies reduced to the P-R, D-J programs, nor to impact the full range of programs available under the Forest Stewardship program and the Food Security Act.

We're a committee in progress. We have another meeting scheduled in late summer. There seems to be good commitment and interest on all parts of the committee to continue our work. So we appreciate your support in our efforts and hope our cooperative work will help you in yours. Thank you.

Senator BAUCUS. Thank you very much, Emily.

Rhonda, it's your turn.

#### **STATEMENT OF RHONDA SWANEY, CONFEDERATED SALISH AND KOOTENAI TRIBES**

Ms. SWANEY. Senator Baucus, on behalf of the Confederated Salish and Kootenai Tribes, I am proud to welcome you to the Flathead Indian Reservation, the homeland of the Tribes. The Tribes appreciate the opportunity to provide testimony to the Senate Committee on Environment and Public Works regarding reauthorization of the Endangered Species Act.

The Confederated Salish and Kootenai Tribes recognize the importance of each and all of the components of the natural world. All species great and small each have a function and an important role to play. The Tribes actively manage for two endangered species, the peregrine falcon and the Northern grey wolf, and two threatened species, the grizzly bear and the bald eagle. In addition, new baseline data are currently being collected on a variety of other lesser known native species, some of which may also be in jeopardy of local, regional and range-wide extinction.

Our tribal wildlife management program devotes a considerable time to management of listed species in the form of annual population monitoring, research, habitat management, planning, impact assessment, coordination with landowners on endangered and threatened species issues, interagency management planning, preparation of biological assessments for pending projects, Section 7 consultations and peregrine falcon reintroduction.

Our tribal fisheries management program has taken a proactive approach to management of bull trout, through a catch-and-release program. The fisheries program is considering a more stringent



policy on bull trout than may be initiated on surrounding lands due to the recent warranted but precluded decision by the U.S. Fish and Wildlife Service. The program has also been very active in interagency management activities involving resident bull trout and Columbia River salmon.

Currently, the Tribes are unable to devote much effort to rare plants due to the lack of funding for baseline inventories and day-to-day management. However, the Tribes are very interested in the status of many of these species due to their cultural and medicinal values.

Through the Tribes' active involvement in endangered and threatened species management, we have had an opportunity to evaluate the Endangered Species Act, its processes and its positive and negative aspects. Our major comments follow.

Number one, the listing process and designation of critical habitat must be based upon sound scientific data.

Number two, the reauthorization must realize the importance of subspecies and races of species as well as species' viability in planning recovery efforts for listed species.

Number three, funding authorization to carry out the mandates of the Endangered Species Act has been absolutely inadequate. Adequate funding will be essential to clear away the backing of pending listing petitions and fund recovery efforts.

Number four, most Indian tribes are affected by the provisions of the ESA and are expected to take an active role in the management of listed species occurring on their reservations. Additionally, many tribes administer effective endangered species management programs, but none of the legislation introduced thus far contains language that acknowledges tribes as managers or provides funding opportunities for the expected management activities. These omissions need to be remedied, and the tribes must be acknowledged as full and active participants in the Act, similar to the role of States. Funding opportunities available to States must also be offered to tribes.

Number five, the need exists to place emphasis on sound ecological-based habitat management as a primary focal point of endangered species management.

Number six, the reauthorization of the Endangered Species Act should encompass a close working relationship with the National Biological Survey and all concerned parties in order to expedite acquisition of data on the status of rare species and limited habitats.

Number seven, the reauthorization of the ESA should provide incentives for cooperative efforts between agencies and the private sector in conservation efforts for endangered species.

And, eight, the tribes' interaction with the U.S. Fish and Wildlife Service through the Section 7 consultation process has been both effective and efficient. Unfortunately, in dealing with the National Marine Fisheries Service on Columbia River salmon issues, the tribes have experienced a lack of response to our comments on the Service's biological opinion for operations of the Columbia River.

In conclusion, the culture of the Tribes has allowed us to co-exist with the many species in our environment, including many that are now listed as threatened or endangered. Given today's pressure on native species, the importance of a strong Endangered Species Act

cannot be understated. Thus, we request that our testimony be incorporated into Senate Bill 921. The Tribes will submit more detailed comments on reauthorization of the Endangered Species Act for the record in the near future.

Again, I appreciate the opportunity to provide an abbreviated form of the Tribes' testimony on issues to you at this hearing today.

Senator BAUCUS. Thank you very much, Rhonda.

I'd like now to explain these charts up here. Some of you probably wonder what they are. Let me try to explain what they are.

To your far left, over here on my right, your far left, the first chart is just basically the title of the bill.

The second one, immediately to my right and the second one to your left, is the chart which includes the bill language for sound science, peer review, and so you're going to hear several comments today about the need for sounder science involved in, particularly, the listing and delisting as well as development of recovery plans. That's the language proposed in the bill, so I urge you to look at that language if you get a chance and give us suggestions on how you think we might improve upon this.

The point of this really is to address the concerns that everybody has, namely, that in the current law there is very little requirement that the Fish and Wildlife Service, the various Federal agencies, the fishery service, et cetera, use science in developing decisions whether to list or to delist. We're requiring, in this legislation, not only sound science but also an independent peer review of scientists so that if someone doesn't agree with the Fish and Wildlife Service decision to list a species, that any person within 30 days after a decision has been made can ask for an independent peer review of scientists to give a second opinion.

What this is designed to do is to be sure that there is an outside, independent scientific assessment, in addition to the scientific assessment by the biologists, the scientists within the various agencies. That's what that chart is all about, that requirement in the statute of soundness and outside, independent peer review if anyone within 30 days after the decision wants one.

Second over here to my left and, again, going from your left to right, over here is the language in the bill telling you what the social impacts are, directing the agencies in developing recovery plans and to minimize adverse economic and social impacts. There is a provision in the Endangered Species Act which directs the agency to look at economics. That has been interpreted to mean economics from a Federal budget point of view, not economics from an individual landowner or State point of view, although recently the Fish and Wildlife Service has gone to, on its own, start to look at costs and social impacts on individuals. We are now putting that language directly in the statute so that these considerations will be made by the agencies.

An earlier stage is listing. Economic and social considerations are not part of whether a species should be listed or not listed. Frankly, that's a biological decision. That's not an economic decision. However, social and economic impacts are directed in the statute to be minimized—and we can get to other points later about that—in the development of the recovery plan and in consultation with landowners, in consultation with the States, et cetera.

The next chart over is the language in the bill dealing with ecosystems, that is, giving a preference and priority for the agency to focus on key species, rather than all species at once, but key species, sort of linking species, but also on an ecosystem basis. That's going to help us encourage more consultation too.

The next chart over is basically the private landowners provisions, and essentially directing agencies, particularly the Fish, Wildlife Service to enter into agreements with private landowners where landowners develop a plan to conserve habitat, or efforts that result in conservation efforts that result in conserving a species, and this is where their payments come in. These are payments by Uncle Sam for landowners who want to develop their land in a way that furthers conservation. That's the whole point of this.

The following chart involves the point that Pat was talking about, State involvement. There's nothing in the current statute that deals directly with State involvement. We in Montana all feel like we are experts in how to manage the deer and elk and game in our State, but we have an agency that develops plans, when we hunt, where we can fish, the seasons, the length of seasons and so forth. We manage our wildlife in this State, and it makes eminent sense that the States should be directly involved with Uncle Sam in not only listing but developing jeopardy opinions and recovery plans and so forth. After all, we here in our State have a pretty good idea of how wildlife in our State must be managed. It shouldn't be left entirely, essentially as it is now, up to the Federal Government.

That's what these charts are all about. That's the language of the bill directed to address these problems that we have.

Now, let me just start with Pat, and I'm going to ask all of you to comment. Very briefly, let's take each of these.

Let's take State involvement. Pat, you made a very good point, that it should not be a buzz word, that it really should work, not just be fancy language. You suggested some kind of joint Federal-State commissions and maybe delegation of States. Obviously, there's going to have to be some interaction between Uncle Sam and States. States alone can't do it all. Otherwise, you've got 50 separate State plans around the country.

What do you think is the fair way to balance the State interests with some overall national goal, too?

Mr. GRAHAM. Senator. Thank you. The idea would be to have a secretary develop some standards that the States could look at and make a determination whether they thought that they could meet those standards and then apply those on a case-by-case basis. In some cases the State may not be interested or capable of dealing with certain species, but other species or groups of species they can. So I think it would have to be dealt with on a case-by-case basis.

But, first, we need to have those standards set up with some assurance that if we move toward those standards we will, in fact, have a State—

Senator BAUCUS. Could you give us some examples of some of the frustrations the State has had with the current Act?



Mr. GRAHAM. I think there's a variety of them, depending on what part of the process

Senator BAUCUS. For example.

Mr. GRAHAM. For example, there is always concern that by initiating action to recognize a species that may need some assistance in a particular area, that simply by initiating the action raises the profile of that species and tends to seem to participate in listing petitions. Anyone can do that. As a result of that, there's sort of a hesitancy to even move forward in trying to manage some of these species and do things for them because the minute the State moves forward in those areas somebody files a listing petition and, immediately, the efforts are transferred from the State back to the Federal Government.

Then, again, in setting goals for delisting, those goals are set up early in the process, and we have targets that we can shoot for.

Senator BAUCUS. Dick, Emily, Rhonda, any comments on State involvement, briefly?

Mr. KNOX. Senator, just to echo Pat Graham, we feel it's very important that the States have the opportunity to have a lead in the development and implementation of these recovery plans. I think we're in full agreement with that. I think it's very important.

Senator BAUCUS. Emily?

Ms. SWANSON. I would just say that we do have a proposed amendment that would address that by directing the secretary to set up, through a formal rule making process, the standards and criteria that I think addresses exactly what Pat is talking about.

Senator BAUCUS. You're not afraid, Emily, that some States might do a good job and other States might do a lousy job?

Ms. SWANSON. As long as the authority rests with the secretary, he has the option to withdraw approval at any point in the process.

Senator BAUCUS. Do you like that approach, Dick?

Mr. KNOX. Yes. We agree with that.

Senator BAUCUS. Rhonda, you make a good point about the tribes not being consulted. In fact, we are going to change this language here to make sure that the tribes are as involved as are States.

Ms. SWANEY. Because we have an inherent responsibility to the protection of our homeland as well as any delegated responsibility we may have to the Federal Government for self-determination. We have a contract and compact to those responsibilities. In some respects, we act as a Federal agency. If that unique role and responsibility will be recognized and strengthened, we would appreciate it.

Senator BAUCUS. There's not sufficient section 7 consultation. That's a good example, as well as tribes also manage—

Ms. SWANEY. We are managers.

Senator BAUCUS [continuing]. Tribal land. Exactly. You made a point about resources. It was a very good one.

There are several reasons why delisting has not worked very well. One is the large backlog within, say, the Fish and Wildlife Service and other agencies dealing generally with candidate listing or threatened species as well as actual species they are working on, so they don't get an opportunity, don't have the resources to deal with delisting.

I also tend to think there's maybe a bit of institutional bias of an agency. People like power. They don't like to give power up. We have to deal with that.

Emily, you mentioned criteria for delisting will help address that problem. I agree with that. To what degree do you feel that the resources dedicated to Fish and Wildlife, other agencies, is insufficient? I mean, is the dollar amount spent now about right, or is it not about right? You know, a lot of people don't like spending more money. I don't like spending more money on anything, but there also is a reality here that, if we're going to prevent species from being listed and consult with States and have sound science and independent peer review in order to prevent the listing of a species, it's probably going to take some resources and some dollars.

I just wondered the degree to which the panel agrees that we need more resources. Anybody have any comment on that?

Ms. SWANEY. I believe in our testimonial statement we stated more resources need to be made available to tribes. I don't know whether they're nonexistent or they're just misdirected at this point.

Senator BAUCUS. Okay. Emily?

Ms. SWANSON. It's my understanding that the amount of funds authorized and the amount of funds actually appropriated are two quite different numbers, and if we were actually getting the money that was authorized, we might see a different implementation scenario. This is the rub, you know. It's at the heart of many of our pieces of legislation. We don't have the money to actually appropriately implement them.

Senator BAUCUS. Dick, Pat, any quick comments on money?

Mr. KNOX. Money is always a rub, as we all know, on both the State level and Federal level. It would appear to me that there would be a possibility to shift responsibilities somewhat. There's no question if the State is going to be greater involved in the implementation of recovery plans that there quite likely is going to have to be some Federal dollars to help that process out.

Senator BAUCUS. Dick, you tend to represent more the producer and rancher and so forth, and Emily tends to represent more the environmental conservation point of view. Why is it that both of you, in fact all four of you, want more science? I mean, how can both sides want the same thing?

Ms. SWANSON. My sense of that is that what everyone seems to be saying is we need more specificity in the Act. We need to be assured that what is happening is both based on science and is appropriate throughout the process, and there's a very strong perception that that doesn't always happen.

Senator BAUCUS. Good.

Mr. KNOX. I agree with that. I think we have to have baselines. I think that this is—it is necessary. Otherwise, we would be degenerating into a never, never land of constant bickering and litigation. I think that this is essential to make the process work.

Senator BAUCUS. We have a lot of witnesses ahead of us. We can't spend too much time here, but as I hear it, you're essentially saying, both of you—and I guess you're representing the views of your group—that we need more specificity in the statute, more objective criteria, like sound science, so we know when a candidate

should or should not be listed, more specificity in other areas too, like criteria for delisting as well as listing and saying essentially that currently, because there's not very many specific criteria, that it's a moving target for a lot of people causing lots of frustration but that if there's more specificity that will tend to reduce frustration.

I hear you also saying that with more efforts in preservation up front and consultation up front and development of conservation plans up front the likelihood of a listing is much reduced.

Is that about accurate?

Mr. KNOX. I think that's accurate. I'd also like to comment that in recovery plans we need to be more specific in reporting the aspect of the recovery plan so, when those goals are nearing completion, or at completion, that the report is made to the secretary so that the delisting process is stricter. That is a concern that we are working on in the committee right now, and I hope that we can come up with an amendment to that effect.

Senator BAUCUS. Okay. Well, before you leave, anything else you want to say—you've got a chance now—that I haven't raised in a question or something that's prompted by somebody else here?

Mr. GRAHAM. Just a comment on your last question. The State's resource in the amount of money coming under Section 6 has declined each year in the last few years to the State, partly as a result of the fact that it's allocated based on the number of endangered species a region has, and Montana doesn't have nearly as many endangered species as other regions.

Even though the amount of money in the Endangered Species Act, Section 6, has gone up, Montana's share has continuously declined, so there are actually fewer resources.

Senator BAUCUS. You're talking about Region 6, essentially Region 6, or from Montana within Region 6?

Mr. GRAHAM. Region 6, which affects, then, Montana.

And then, second, some of the things—there's a lot of candidate species that are out there, and that money is not going to those. It goes to those already on the list, so preservation aspects are not dealt with, and through some more cooperative efforts, maybe we can make some of the money we have go further if there's a little bit more shared authority instead of all resting on the Federal side.

Second, I think, in turn, it would give the States more incentive to look at redirecting or creating additional resources to put toward this if there's some feeling those resources would have a lasting effect in terms of preventing the listing of those species or helping get species off the list.

Senator BAUCUS. I appreciate your comment about Montana getting short-tripped. I'm going to see what I can do about that.

Thank you very much for your help. I, again, want to thank you, Dick and Emily, and their group. You've worked very hard. The members have worked very hard, driven many miles and put in a lot of time. I just want to thank you and tell you that.

Your next meeting, I guess, is in August. I'll be looking forward to seeing what additional information you come up with.

Thank you very much. Thank you.

With our next panel, we are going to move to the grizzly. Dr. Loren Hicks, who is the biologist at Plum Creek Timber Company;



Mr. Mike Roy, a scientist for the National Wildlife Federation; Chris Servheen, Northern Rockies coordinator for the Interagency Grizzly Bear Committee; Dr. John Craighead, chairman of the Wildlife-Wildlands Institute; and John Bloomquist, attorney with the Montana Stockgrowers Association.

This next panel focuses on an issue that's literally in our own backyard, and that's the grizzly bear recovery plan. In many ways, I think, grizzly bear recovery represents both the best and also the worst of the Endangered Species Act because on one hand our bear numbers are increasing. They're getting to the point, if they're not already there, where the bear can be taken off the list and returned to State management. On the other hand, efforts to protect bears have caused a lot of pain for the livestock industry and for a lot of operators, the timber industry and recreationalists, and the panel is to tell us how the Act is working or not working in recovering bears and ideas on how to better balance the needs of folks who are making a living off the land, as well as recovery, on the other hand.

I mentioned we have today Dr. Hicks, Mike Roy, and Chris Servheen and Dr. John Craighead and also John Bloomquist.

Let's begin with you, Loren, because you're first at the table.

#### **STATEMENT OF MR. LOREN HICKS, PLUM CREEK TIMBER COMPANY**

Mr. HICKS. Thank you, Mr. Chairman.

I am Dr. Loren Hicks, manager of Fish and Wildlife Resources for Plum Creek Timber Company. I'm in charge of the fish and wildlife handling activities on 2.1 million acres of commercial forest land in Montana, Idaho and Washington.

For nearly two decades Plum Creek has been involved with State and Federal wildlife agencies in the coordination of research and management activities for threatened and endangered species. In addition to our staff biologists and hydrologists, we have consulting biologists under contract to survey and inventory our lands for species that are federally listed or proposed for ESA protection. We routinely share our data with the appropriate State and Federal agencies.

Despite all this coordination and technical assistance, there still remains widespread confusion regarding ESA obligations between public and private landowners. Public land managers, under the ESA, are required to manage public lands to further the recovery of listed species while private landowners are obligated to avoid the taking of individual members of listed species on lands under their control. Our interpretation of the ESA suggests to us that public and private landowners can share common goals for conservation of federally listed species, but have different roles in the management of the species.

Many private landowners have been adversely impacted by administration and interpretation of the ESA, and Plum Creek is no exception. For example, many projects to build roads across Federal land to access Plum Creek land have been held up due to ESA related delays, including one project here in Montana's Swan Valley to build 150 feet of road which has been held up for eight years because of disagreement over its impact on grizzly bears.

Access to our land base is fundamental to our business, and a congressionally mandated legal right under ANILCA. Plum Creek has nearly a third of its lands in Central and Western Washington within the spotted owl take circles in which forest management is either precluded or severely restricted, causing substantial economic harm. Each of these take circles on average tie up at least \$25 million of timber to protect one pair of owls. As you can see, the ESA can have dramatic economic side-effects for the landowner.

Land exchanges, even though with substantial environmental benefits, have also been delayed or even canceled due to confusion over ESA obligations. The Act could be significantly strengthened by adding a provision authorizing land exchanges that are part of habitat conservation plans or otherwise further the intent of the Act.

The endless litigation surrounding the ESA has also added to the uncertainty and reluctance of the private landowners to commit to a course of action which is likely to be very expensive and often has been subsequently negated by the courts. For the Act to be successful, Congress must find a way to include economic consideration as a part of ESA administration. Plum Creek has some specific thoughts on that issue that were presented to the House committee on Merchant Marine and Fisheries in October of last year, and that testimony is included with my written comments.

There are, however, a few rays of hope within the ESA. We are currently involved in two negotiations with the Federal Government to resolve current and future impacts of the ESA on our business. Briefly, I will describe our proposed conservation agreement on grizzly bears with the U.S. Fish and Wildlife Service and the habitat conservation plan we are pursuing with the Service on spotted owls and other species in the Washington Cascades. I will be brief because the details of these two projects have not yet been finalized. However, we are cautiously optimistic that these two voluntary attempts to work within the confines of the ESA will be successful.

Nearly one-tenth of Plum Creek's total ownership, over 200,000 acres, is within habitat considered occupied by the threatened grizzly bear. The conservation agreement we are currently negotiating with the U.S. Fish and Wildlife Service will produce a set of environmentally sound and operationally feasible best management practices for grizzly bear habitat management on Plum Creek lands. The objective of our BMP's is to augment recovery of the grizzly bear on Federal lands by providing additional protection from disturbance, displacement and illegal taking of grizzlies on Plum Creek lands.

The BMP's incorporate the latest grizzly bear research findings and the most advanced geographic information system technology to address the three basic concerns for grizzly bear management: retention of effective security cover, timing of forest management operations and management of road systems. When completed, our conservation agreement will provide the basis for coordinated grizzly bear habitat management across Plum Creek and U.S. Forest Service ownership within the Northern Continental Divide ecosystem.



This agreement will build on the significant progress that land managers have made in protecting grizzly bear habitat over the last decade. We are encouraged by the cooperative approach taken by the U.S. Fish and Wildlife Service and believe the conservation agreement process could serve as a model for other private landowners seeking to pursue environmentally and economically sound management plans.

Last week Plum Creek and the U.S. Fish and Wildlife Service announced their intent to develop a habitat conservation plan for 170,000 acres of Plum Creek's holdings in Washington State. Using an ecosystem management philosophy, and a multi-species approach, the HCP will attempt to address long-term habitat concerns for listed species such as spotted owls, marbled murrelets and grizzly bears as develop prelisting agreements for species of concern such as goshawks, bull trout, steelhead and salmon. We believe it will be the most ambitious HCP ever undertaken.

We are cautiously optimistic about our abilities to work with the Federal agencies, the administration and ultimately with Congress to resolve the management dilemmas imposed by the ESA, but we are not there yet. Federal agencies like the U.S. Fish and Wildlife Service and the Forest Service seem to be resolving their internal disputes but have yet to develop a consistent policy for ESA administration on Federal lands. We must recognize that, for private landowners like Plum Creek to work progressively within the ESA, economics and operational common sense must be incorporated into biological strategies. We feel that both the environment and the ESA would work better and would be better served by a concerted effort to make the system work.

Your bill, Mr. Chairman, provides a framework to begin discussions. Congress must recognize the different but essential roles of private landowners and the Federal Government. The cooperative approach Plum Creek and the U.S. Fish and Wildlife Service have embarked upon provides hope that the ESA can work, and we urge you to consider reforms of the Act that facilitate such efforts.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you very much, Dr. Hicks.

Mr. HICKS. Senator, I know that we may need to lighten up around here a little bit, but since all human knowledge seems to be captured on bumper stickers, this is a bumper sticker that says, Feed bears, not lawyers. In fact, a colleague of mine suggested that we just take the "not" out of here and just say, Feed bears lawyers.

Senator BAUCUS. I agree. There's no doubt about it. There's too many lawsuits in this country. It soaks up a lot of resources which could be much better spent. I agree with that very much.

Mike?

#### **STATEMENT OF MICHAEL ROY, WILDLIFE BIOLOGIST, NATIONAL WILDLIFE FEDERATION**

Mr. ROY. Mr. Chairman, my name is Michael Roy. I'm a wildlife biologist, not an attorney, for the National Wildlife Federation, and I'm here today representing both the National Wildlife Federation and our State affiliate, the Montana Wildlife Federation.

Chairman Baucus, as you know, the citizens of Montana both rely upon and treasure the wildlife and plant species that provide

the backdrop for Montanans' quality of life. In Montana we are showing that the Endangered Species Act works. Perhaps no single species more greatly exemplifies the uniqueness of Montana than the grizzly bear. In 1975, when the grizzly was first listed as threatened under ESA, its numbers had dwindled to only 2 percent of when the first Europeans crossed the continent. In the early 1970s, just prior to protection under ESA, bears continued to die in unsustainable numbers in most of the ecosystems because of bear-human conflicts brought about by improper sanitation practices and removals after livestock depredations.

In the Northern Continental Divide ecosystem alone, an average of 27 bears die each year due to human cause, far more than the maximum of 4 to 6 percent human caused mortality that grizzly populations can withstand without decline. In addition, critical grizzly habitat continues to be lost due to improperly planned timber harvests and associated road building. Many knowledgeable scientists feel the grizzly will be gone from the American West by the beginning of the 21st Century.

We've not fully ensured the future of the grizzly during the ensuing two decades, but combined work of Federal, State land and wildlife managements, native American nations, local government, private industry, the conservation community and the public has established a positive trajectory that has stabilized and, in some cases, increased both grizzly numbers and grizzly security. While measures are imperfect, we now see evidence of increased bear population trends and widening geographic distribution in several ecosystems.

With a positive course established, the U.S. Fish and Wildlife Service is now embarking on a path toward true grizzly recovery. The Service is focusing on the two ecosystems without viable grizzly populations, the 3.5 million acre Bitterroot and the 6 million acre North Cascade. This will be a long and likely rocky process, but one which may result in a 50 percent increase in grizzly numbers in the West. If successful, it will also set the stage for connecting at least three of the ecosystems, thus minimizing the risks of genetic impoverishment that currently isolated populations are predicted to experience over time.

The grizzly's protection under the ESA has reaped additional benefits as a catalyst for ecosystem management in the form of innovative multi-agency and public-private cooperative efforts. Here in the Flathead the Montana Department of Fish, Wildlife and Parks employs a full-time staffer to interact with local residents and help them live with grizzlies. On the east side of the Missions, the U.S. Fish and Wildlife Service is using state of the art geographic information system technology to assist local communities in managing rapid development while preserving corridors for grizzlies to travel between the Bob Marshall and the Mission Mountains Wildernesses. And to our west, in the Bitterroot ecosystem, our organization is working with a coalition of other conservationists, timber workers and the forest industry to develop a recovery strategy that will assure grizzly recovery while minimizing impacts on local economies.

Mr. Chairman, the grizzly is only one example of ESA success in Montana. The Act has also provided a management framework for

grey wolves which meets the needs of ranchers, sportsmen and conservationists and is allowing wolf populations to increase towards recovery. The Endangered Species Act has given needed protection for our bald eagles so that their numbers have nearly tripled since 1986 and their status down-listed from endangered to threatened. And through the grizzly recovery process, we have improved forest management and road density standards that are essential for the conservation of several ESA candidate species, such as lynx, wolverine, fisher and bull trout as well as the continuance of quality big game hunting opportunities.

The National Wildlife Federation and the Montana Wildlife Federation strongly support the reauthorization legislation introduced by yourself and Senator Chafee. We endorse their measures to make conservation efforts under the ESA more pro-active and more ecosystem oriented, the provisions to improve recovery planning participation and implementation and to establish incentives to promote landowner conservation and increase funding.

By reauthorizing and fine-tuning the Endangered Species Act, we preserve Montana's and the Nation's wildlife and plant resources and, by extension, our long-term economy and way of life. Nearly 50 years ago, the great conservationist, Aldo Leopold, deplored what he termed the precarious state of the grizzly at that time. His assertion then continues to be a fitting basis for moving ahead with our current ESA efforts in Montana. As Leopold said, "Relegating grizzlies to Alaska is about like relegating happiness to heaven. One may never get there."

Thank you.

Senator BAUCUS. Thank you very much, Mike.

Before we go any further, John, let me just say something virtually irrelevant to anything, how much I appreciate this hearing.

I conduct a lot of hearings, a lot at home, a lot back in Washington, D.C. It is very comforting to have a hearing here and, after everybody speaks, to hear a round of applause for every witness. That never happens in Washington, D.C. in a hearing room. Somebody speaks, and that's the end of it.

I appreciate sort of the backing that all of you are giving to each person who speaks because it shows that we are working together to try to solve this thing.

John, go ahead.

#### **STATEMENT OF JOHN CRAIGHEAD, WILDLIFE-WILDLANDS INSTITUTE**

Mr. CRAIGHEAD. Senator Baucus, I am John Craighead, retired ecologist. I have conducted scientific studies of the grizzly bear in three wilderness ecosystems for a continuous period of 35 years.

The members of Congress, you are to be congratulated. The Endangered Species Act is truly visionary legislation. There is strong scientific evidence that the ESA has been effective in halting a sharp decline in grizzly bear numbers first detected in the early 1970s, but scientific evidence for a recovery trend is weak. It is especially unconvincing for the bear populations inhabiting the Yellowstone ecosystem. I would like to enter into the published record Exhibit A, an index to our manuscript, "The Grizzly Bears of Yellowstone".



Without the protection offered by the ESA over the past 20 years, grizzly bear populations in the lower 48 States would most probably be close to extinction, thwarting any possible recovery. We have been making headway on grizzly bear population recovery, but we must do much better.

For example, Congress stated the purposes of this Act, the ESA, are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved. That has not been accomplished largely because the prime directive has been amended through direct efforts of the management agencies.

As a result, the original ecosystem mandate to prevent decline of critical grizzly bear habitat has not been achieved. The ESA has not measured up to expectations, due more to a lack of political will to enforce it than to the Act's technical deficiencies. However the ESA functions in the future will depend on the ESA remaining a strong legal tool and on how well scientific knowledge is translated into public policy.

There are a number of specific goals that can and must be attained under the ESA if the Act is to be effective in preserving the grizzly bear and perpetuity. I believe the six that follow to be critical: Number one, specific protection of adequate and appropriate habitat, and this will require ecosystem protection. Two, detailed vegetation mapping of all recovery areas utilizing satellite multi-spectral imagery and computer assistance in conjunction with detailed standardized vegetation sampling.

Number three, maintenance of populations sufficiently large to assure demographic and genetic persistence in the long term. Number four, continue to minimize human caused mortality. Efforts in this direction have been excellent. Number five, listing of species as threatened or endangered based only on biological considerations with integration of sociopolitical and economic factors into the biological recovery strategy as necessary, but with biological considerations taking precedence. Sixth, strengthening political will to enforce fully the ESA and, specifically, the recovery of the grizzly bear.

Protection of its ecosystem-wide habitat requirements will alleviate the need in the future to list as threatened or endangered other species dependent on the same ecosystem. An effective recovery plan for the grizzly bear will serve essentially as an integrated multi-species recovery plan. Species by species recovery will still be necessary but will continue to be costly, and often ineffective where the habitat requirements are large wilderness ecosystems.

I reiterate that the Endangered Species Act of 1973 has served as a fine instrument for preserving threatened and endangered species and that the ESA amendments of 1978 and 1982 have served overall to strengthen the intent of the Act.

In conclusion, I wish to commend Senator Baucus for his unflagging support of the ESA and for his fine amendment bill. We must keep in mind, however—I speak as a citizen that's been on this planet for almost 80 years and not as a scientist. We must keep in mind that the public lands of the Northern Rockies will, with all their biological diversity, belong to all Americans, not to the citi-

zens of any one State or any one social or economic group, and we must remember those that come after us.

Thank you very much.

Senator BAUCUS. Okay, Chris. See if you can match that one.

**STATEMENT OF CHRIS SERVHEEN, GRIZZLY BEAR RECOVERY COORDINATOR, U.S. FISH AND WILDLIFE SERVICE**

Mr. SERVHEEN. That's a tough act to follow.

Thank you, Senator, for the opportunity to testify today. My name is Chris Servheen. I am the grizzly bear recovery coordinator for the U.S. Fish and Wildlife Service. I've been in this position since 1981. My primary duty is to coordinate all research and management activities associated with recovery of the grizzly bear in four States, Wyoming, Montana, Idaho and Washington, the places that the bear reigns today. I received my Ph.D. from the University of Montana, studying grizzly bears in the Mission Mountains just a few miles east of where we are today in this room, and my research, Inter-Mission Mountain zone grizzly bears, was supported by the Confederated Salish and Kootenai Tribes.

The grizzly bear has been listed as a threatened species under the Endangered Species Act since 1975. Intensive recovery efforts have been underway since 1980 with the development and implementation of the first grizzly bear recovery plan. Since the listing of the grizzly bear, dramatic improvements have been made in addressing these factors in most grizzly bear recovery areas. Improvements in the status and management of the grizzly bear are due in large part to the cooperative efforts of State, tribes and Federal agencies in implementing the Endangered Species Act.

In the lower 48 States, grizzly bears currently are found in five separate populations, the Yellowstone, the Lower Continental Divide, the Cabinet-Yaak, the Selkirk and the North Cascades. In addition, the Bitterroot ecosystem in East-Central Idaho and Western Montana is slated for grizzly bear recovery. These efforts will start in 1994 in order to, once again, get grizzly bears into this area.

Survivorship data indicate that the grizzly bear population in the Yellowstone ecosystem is currently increasing. Human caused mortalities have declined in the Yellowstone area since the 1980s.

This graphic shows the human caused mortalities in both the Yellowstone and the Northern Continental Divide ecosystems. This decline in mortality has been the result of many bear-human conflicts. While the population is increasing in the Yellowstone area, it continues to require intensive management in order to limit human-caused mortality and to assure that habitat does not decline in amount or quality.

Human-caused mortality in the Northern Continental Divide ecosystem has also declined since the 1980s, as shown in this graphic. There continues to be concern about the status of the small bear population in the Mission Mountains and in levels of human development in and around the Northern Continental ecosystem, especially development and fragmentation of private lands within bear habitat.

In the Cabinet-Yaak ecosystem, we have recently placed four young female grizzly bears that originated in British Columbia into this area in an effort to increase cub production. While it's a bit

early to determine whether this has been successful or not, we are hopeful that these young females will begin to have cubs and we will start to see cubs with adult females in the Cabinet Mountains in the future.

The Endangered Species Act has helped in grizzly bear recovery by providing funding for recovery actions and research, providing grants to the States to support their involvement through Section 6 of the Act, providing Federal law and Federal law enforcement to help State law in limiting illegal kills and by allowing review of all Federal projects through the application of the Section 7 consultation process.

The Act also has enabled the coordinated production of the second version of the grizzly bear recovery plan, an adoptive management document that will be revised every five years. This dynamic process of recovery and recovery planning is necessary because much new information and technology is being developed and becoming available for use on grizzly bears and grizzly habitat management.

Due to the intensive level of research, grizzly bear management is one of the fastest changing fields in wildlife science and wildlife management. In order to limit mortality, the States of Montana and Wyoming now have full time bear-human conflict management biologists who work with local communities and local people to help them live in bear habitat with minimal conflicts. Similar efforts are also underway with tribes on both the Blackfeet and Flathead Indian Reservations.

Intensive public education efforts are underway through partnerships with local governments such as Missoula County and with private conservation groups like Brown Bear Resources, the Center for Wildlife Information, Defenders of Wildlife and the National Wildlife Federation. These education efforts are aimed at building better public understanding about bears and their needs and thus establishing a firm base of support among the local public for the steps necessary to maintain bears for the long term.

Private landowners are a key factor in grizzly bear recovery because so much important grizzly bear habitat is in private ownership. The Swan Valley has more than 30,000 acres of private lands, and the North Fork of the Flathead Valley has more than 15,000 acres in private ownership.

This computer-generated graphic shows the North Fork of the Flathead Valley. The purple is Glacier National Park. This green area is the Whitefish Range, and the blue in the distance is British Columbia. The Canadian Line runs across the top. This is the North Fork of the Flathead River that runs down here, and the yellow lands you see are those 15,000 acres that occur in this very important area for grizzly bears.

The Fish and Wildlife Service is continuing to look for more incentives to help us to assist these private landowners in carrying out conservation actions on their lands. The Fish and Wildlife Service is very encouraged by the current efforts of Plum Creek Timber Company to develop a comprehensive conservation agreement to manage their lands in the Swan Valley to limit impacts to grizzly bears. Plum Creek is the largest private owner of grizzly bear habitat south of Canada. The Service believes the actions of Plum



Creek Company will play a significant role in determining if grizzly bears can live in Swan Valley and the Mission Mountains in the future.

This is a land ownership pattern in the southern end of the Swan Valley. This is Lindburg Lake right here. Holland Lake is up here. The green areas are National Forest Service lands. The Mission Mountains are on this side, the Swan and the Bob Marshall on the other side. The pink sections are Plum Creek ownership. This map shows the importance of what Plum Creek does in the Swan for the future of grizzly bears in this area.

The Service looks forward to the cooperation——

Senator BAUCUS. I'm going to have to ask you to wrap up the best you can.

Mr. SERVHEEN. Okay. Under the newly revised recovery plan, a new effort will begin in the Bitterroot, as I said. Because of intensive discussions and listening sessions over the past few months, a cooperative spirit now exists in the Bitterroot area between conservation groups, the local timber industry, labor unions, the Idaho Legislature and other groups, and just yesterday all these groups agreed to work with the State and Federal agencies in this area in order to begin the process to get grizzly bears into the Bitterroot.

This is a map of Federal land ownership in the Northern Rockies. The blue areas you see on this map are designated wilderness. This is the Selway-Bitterroot. South of this is the Frank Church River. This map shows the importance of this vast area not only to grizzly bears but to many other species, such as lynx and wolverine.

These make up the largest piece of contiguous wilderness left in the lower 48 States. This piece is of dramatic importance for not only the recovery of grizzly bears but for true ecosystem management, and integration involving bears in this area has the potential to pull together the needs of all these species, and the true ecosystem management in this area that John mentioned is so important to all of us. Thank you.

Senator BAUCUS. Thank you very much, Chris.

John, you're on. You're a lawyer, remember that.

### **STATEMENT OF JOHN BLOOMQUIST, MONTANA STOCKGROWERS ASSOCIATION**

Mr. BLOOMQUIST. Thank you, Chairman.

My name is John Bloomquist, and I am an attorney from Dillon, Montana where I practice in the fields of natural resource and environmental law.

I agree with Mr. Hicks and you, that limited resources are better spent outside of litigation. The livestock industry recently finds itself more and more in litigation, and, believe me, there is nobody that looks forward to putting the dollars on the ground. More in the livestock industry, and less in court. I am testifying before you today in behalf of the Montana Stockgrowers Association, an organization of ranchers, landowners and livestock producers located throughout the State of Montana. The MSGA would like to personally thank you, Senator Baucus, for scheduling a field hearing in Montana on this critical issue.

My testimony today will feature various perspectives of the Montana livestock industry's experience with activities surrounding grizzly bear recovery as well as suggestions for improving the function, acceptance and policy making ramifications of the Endangered Species Act.

Predation of livestock is of concern to many livestock producers in the State of Montana, and the Endangered Species Act can prevent producers from protecting their property from listed predator species of cattle or sheep. Such high profile incidents such as that of John Schuler near Choteau indicates significant individual hardships which are borne by those attempting to protect livestock from predator attacks, including grizzly bear predation. The MSGA believes this indicates that Section 3 of the present Endangered Species Act regarding the take of listed species is subject to reexamination.

Also, examples such as a recent lawsuit filed on a grazing allotment located along the Rocky Mountain Front to prohibit grazing in an area inhabited by grizzly bears and grey wolves causes a great deal of concern and skepticism from the ranching industry regarding the listing of any species.

One contentious issue for the livestock industry surrounding grizzly bear recovery in Montana addresses the issue of critical habitat for the species and associated Federal land management decisions made as a result of grizzly bear recovery. As you know, in Montana a great deal of grazing activity occurs on Federal lands. Decisions made on these Federal lands primarily managed by the U.S. Forest Service and the BLM have impacted livestock operations in the State. Most of the domestic sheep allotments located in Situation One grizzly bear habitat have been eliminated, and there are those who urge grizzly bear corridor management or linkage zones for Federal land management decisions in Western Montana. Corridor management planning or linkage zone management are cause for great concern among other users of national forest lands, including grazers.

In general, in designated grizzly bear habitat, most forest plans dictate that decisions will favor the needs of the grizzly bear when habitat and other land uses conflict. This basic conflict has driven many land use decisions and lawsuits surrounding grizzly bear habitat in terms of precluding timber sales, restricting road access, limited grazing use and, as set forth, precluding Federal land users from using such lands when listed species are present.

I also believe that the grizzly bear experience in Montana also exemplifies another concern with the Endangered Species Act as presently administered. This issue surrounds the process for the delisting of a species as well as the issues surrounding what scientific data and information would be utilized regarding the listing or delisting of endangered species. The history of the grizzly bear recovery planning efforts suggest the need for a consistent and recognized process for scientific peer review as well as a need for an identified process for delisting of any species.

The MSGA recognizes that certain principals and considerations should be the basis for any reauthorization of the Endangered Species Act by Congress. MSGA recommends and urges that this committee and Congress consider and implement the following changes



in the Endangered Species Act: First, Federal agencies must expand consideration of social and economic impacts of species designation beyond the present reference in the Endangered Species Act to the recovery planning process or the designation of critical habitats. The recovery plans should include State and local representatives in addition to Federal experts, and public hearings in affected counties should be required prior to the approval of any recovery plans.

Two, the issue of protection of private property rights. The list of designated and petitioned species continues to grow. Much of the impacts will be felt on those who own and enjoy private property in Montana. The Endangered Species Act must recognize private property rights so that the burden is not imposed and borne by the owners of a particular species habitat. MSGA would urge measures be considered which allow private property owners a role in protecting their property and managing designated habitats as well as redefining the provisions of the Act regarding take, harass and harm so that the prohibition only apply to the acts which can, in fact, cause injury to a member of the species.

In addition, measures should provide standard public guidance to private landowners for habitat consideration when called upon for assistance by such landowners. Incentives for private landowners should be carefully constructed and crafted so as not to impose undue burdens on landowners who happen to own critical habitat.

Three, a general return of the Endangered Species Act to its original goal of the species protection is needed. The Endangered Species Act has become a tool for various land use and land control agendas which in the long run not only adversely affect human inhabitants of areas which are designated for recovery, but also in the long run inhibit true comprehensive programs for a species protection.

Any Endangered Species Act reauthorization must ensure that science is utilized to the most reliable and verifiable manner possible. Peer review of listing and delisting should be provided by those with real knowledge of these species and the needs of a particular species. Biologists and scientists from outside of government should be available for consultation.

Finally, the requirement that States be consulted on the status of petitioned species. Furthermore, require that the State consultation be mandated in the listing, recovery planning and delisting process. States should be consulted to fill any data or information gaps which may be necessary in designating critical habitats. Also, States should be allowed the option to develop and implement recovery plans, provided that social and economic considerations are mandated.

The MSGA appreciates the opportunity to present its views to this committee on Endangered Species Act reauthorization. It is clear that the Act needs certain changes to prevent the Act from losing its original focus. The Act should not be a tool for the furtherance of hidden agendas. Reauthorization should truly, truly consider the human, economic and social impacts of Endangered Species Act administration. Efforts by Congress to change the Act should ensure species protection in a manner which recognizes the

burdens and impacts placed upon those who live and work lands where listed species may be recovered.

Thank you, Senator Baucus, and the MSGA looks forward to working with you and the entire Montana delegation as this process continues.

Senator BAUCUS. Thank you very much. Thank you very much. Thank you again, John.

Following up a little bit with what John Bloomquist said, let me ask you a question, John Craighead. You mentioned in your statement that the Act hasn't worked better due more to a lack of political will than to certain mechanical deficiencies of the Act. On the other hand, John Bloomquist thinks that the Federal agencies have been too zealous, too much will, if not political will, at least agency. What's going on here? How can you say that when John thinks the agencies have been too zealous?

Mr. CRAIGHEAD. Well, soon after the Endangered Species Act was passed, the agencies were asked to define critical habitat for the grizzly bear, and there was a Senate hearing held in Cody, Wyoming, and at that hearing the habitat for grizzly bears was delineated largely in terms of ecosystems as requested by Congress.

It became apparent at that hearing that there was going to be some problems with other uses of ecosystems and that the agencies responsible for this would not have the freedom of action that was desired, so the original Act was amended, and they were allowed to delineate critical habitat by management situations, five of them.

These didn't in any way provide the necessary habitat for species, that all of the studies that have been done on grizzly bears show that they require large ecosystems, that they utilize the alpine and sub-alpine and transition zones and that simply designating enclaves within these ecosystems wouldn't function.

That's the way which grizzly bears have been managed up until now. I don't think this is effective. The Act should have been enforced as—the obvious intent of Congress is very clear—and Congressman Dingell who offered the bill also stated that before the Congress—that entire ecosystems should be preserved.

Senator BAUCUS. I hear a lot from stockgrowers, and I think they've got some legitimate concerns here.

Number one, I don't know if this is true or not, but I heard some operator was told by the Forest Service or Fish and Wildlife Service or whoever it was that he could carry a shotgun up into his allotment but not a rifle because there might be grizzlies around and he shouldn't—somehow the rifle might be used to shoot a grizzly.

Another story I heard was somewhere at an allotment that an operator couldn't have a rifle because the operator might not know the difference between a wolf and a coyote. If I know that rancher, he knows the difference between a wolf and a coyote.

But you hear these stories, and they're anecdotal. I don't know how true they are, but what do you say to a stockgrower if, in fact, he's told he can't carry a rifle into an allotment, whether it's because of bear or wolf versus coyote? I mean, what do you say to the general concerns of stockgrowers who are concerned that wolves and grizzlies are eating up their livestock and they're having a hard time dealing with all that?

Or anybody else that wants to answer that, Chris or Mike or anybody else who wants to address that basic question.

Mr. CRAIGHEAD. Senator, I'm very hard of hearing, and I'm having a difficult time following what you said, so if someone else would like to respond—

Senator BAUCUS. Let me repeat it so you can hear too.

What do you say to the stockgrowers, first, who face, if it's true, rulings and dictations or whatever by agencies who say, You can't carry a rifle to your allotment because you might shoot a wolf instead of a coyote. You can carry a shotgun to protect yourself against a bear, but you can't carry a rifle?

I don't know how true these stories are, but you hear these stories, and you wonder, What do you say to somebody in that situation? That sounds kind of reasonable to me.

Second, what about the general concern of stockgrowers who find that bears or coyotes or, in this case maybe down the road, wolves are chewing up on the livestock?

Mr. CRAIGHEAD. I can understand the way a rancher or livestock raiser feels. I think it's the responsibility of the Federal Government to make the proper reparations for that sort of thing, and over many, many years of predator control, one of the biggest problems is that people with livestock have not been sufficiently repaid for their losses, and even when they're repaid, they have to go through such a long process to get their money that it's really not effective.

Senator BAUCUS. Chris or Mike, do you have any comments on that question?

Mr. SERVHEEN. Well, I think that we sympathize with the owner who's had a loss. I'd just point out an interesting issue in the Federal budget is that we have money to kill predators, but we don't have money to reimburse livestock losses from predators.

Senator BAUCUS. You're saying more money to reimburse.

Mike?

Mr. ROY. I'd point out, Senator, that there is money currently to reimburse. It isn't government money. It's perhaps the best kind of money out there. It isn't coming from tax dollars. It's sponsored by another conservation group, Defenders of Wildlife, that does reimburse for livestock depredation by wolves in Montana. In some States there are also State programs.

I just wanted to point out that, as you mentioned, Senator, you weren't sure of the veracity of some of the stories you have heard, and I think that's a tremendous concern today. We've seen press stories about the ESA in the last week or so about kangaroo rats in California and the implication that whole communities are burnt down because people couldn't disc their yards to protect from wildfire, and yet we look at our recent, I believe last week, GAO report that demonstrates that the terrible fires couldn't have been stopped by an army, let alone a hundred feet of discing.

I think we see that in the livestock community and the Northern Rockies. I think we see a broad brush viewpoint. When we look at specific examples, they simply aren't there.

People are being reimbursed. There are problems that continue, but I think that with State and Federal agencies maybe we see a stalling.



I guess I would add one last point. I have no idea about not being able to carry a rifle or shotgun, but given the right conditions, I bet nobody on this committee could tell a wolf from a coyote and a grizzly from a black bear in the right light and right woods conditions. We can all make mistakes.

Senator BAUCUS. I don't know about that. I'm not sure I agree. I know the difference between a wolf and coyote. That's pretty clear.

John, are these stories true or not true? What about compensation? I hear that's pretty slow.

Mr. BLOOMQUIST. Chairman Baucus, let me step back one step. The issue with protecting predators is not just necessarily predation on livestock as far as the livestock industry is concerned. The Endangered Species Act really is not just an act about species. It's about habitat and habitat protection and measures that occur upon a listing, and that's what concerns livestock users, other Federal land users, communities, not necessarily the issue of compensation for particular loss of livestock, but if we start managing grizzly bear from Yellowstone to the Canadian Border and Federal land management decisions within that corridor are driven by the grizzly bear, obviously there's going to be significant impacts on other users both of Federal lands and private lands because, obviously, a separate deal is being discussed about getting private landowners more involved, compensating private landowners, setting up cooperative management agreements.

All these things are very well and good and need some fleshing out in the specifics, but if you're placing burdens on—no one here can deny you're placing burdens on communities, on individuals, on landowners. Anytime a species is listed or is petitioned to be listed, whether it's grizzly bear, whether it's a listing to—a petition to list swift fox, whether it's any type of aquatic species, impacts are felt.

As far as compensation by private funds, I think that's an interesting gesture. It's a nice gesture. Sometimes it works.

It's very difficult to verify some of these predator kills. Many times livestock producers in areas where wolves and grizzly bear populations exist go up with X number of head and they come back with X minus, and as you know, it's very difficult to verify at certain times where those livestock were lost, and assumptions are made. I would agree, but I think sometimes they are very well founded assumptions.

Senator BAUCUS. What about the inability to bear a rifle? Is that true or not true?

Mr. BLOOMQUIST. I've heard a similar rumor. I believe the one particular instance I am aware of—it is an actual—right now, as we speak—of course, there is some litigation which I referred to. As a result of that litigation, the Forest Service basically took or amended the phrasing authorization that that particular producer operates under and prohibited him from engaging in any type of predator control of his own. So he couldn't go up there and take care of coyotes because of grey wolves and grizzly bear presence, and I don't know if it was because, you know, he couldn't tell the difference. I'm sure, knowing this individual, he could tell the difference—I can guarantee you that—and could do something about



it to protect his interests, but now they've basically taken that away.

Senator to directly answer your question, I don't know about those rumors, whether they're true or not.

Senator BAUCUS. Let me ask a question, Loren, about Plum Creek's developing conservation plans. I appreciate that, and I know that a company the size of Plum Creek has the resources to do that. But what do you say to a smaller operator or to a logger who is logging off public lands? He doesn't have the opportunity that Plum Creek has on private lands because they are a smaller operator. He doesn't have near the resources Plum Creek has. They face road closures, and look at the Flathead timber sale. It's declined dramatically over the last several years in large part due to grizzly. So what do you say to the operator with—the smaller operator who has all these problems and probably has a hard time at making ends meet?

Mr. HICKS. That's a good question, Senator. I think one way of approaching and answering would be to take our own experience and what we intend to do with many of the other landowners that we share the landscape with.

With regard to our conservation agreement, we feel it will provide a blueprint and an opportunity for smaller landowners, even landowners perhaps in the Swan Valley, like the State and other folks, to sort of discern their own role in the conservation strategy for bears. With regard to small, private landowners, we feel the geographic information technology and some of the other information, research, should be made available to them to let them help understand their potential impacts and possible roles in the solution. With regard to our habitat conservation plan, we intend to allow an opportunity, as that becomes fleshed out in more detail, to allow landowners, small, private woodlot owners and adjacent landowners the opportunity to enter in with us on the conservation plan so they have the opportunity to take part in the mitigation plan we're developing or, if they're not comfortable with that, to default to the standard rules and regulations which they now have governing the spotted owl in that area.

Senator BAUCUS. I'm not sufficiently aware of the number of small woodlot owners or aware of where their places are, but is it practical that that could be adopted by the smaller operators?

Mr. HICKS. We know that's been the toughest part of the equation is all of the small landowners. In Washington State nearly a quarter of the timber, the merchantable—the forest lands in Washington are owned by small, private landowners. In our area alone there are many of them.

Senator BAUCUS. What about here, in our State?

Mr. HICKS. In our State here it's—I'm not aware of the exact figures, but it's probably similar. Many of those woodlot owners have various feelings about whether or not they want to get involved in these strategies or not.

I can give you one example, though, of the kind of confusion that these small landowners have. One small landowner involved in one of my areas in the I-90 corridor near Snoqualmie Pass recently got money from the Soil Conservation Service and the Stewardship Grant to thin the timber on his property, to go through thinning

and pruning to enhance the growth of the timber, and on the other hand he got a letter from the Fish and Wildlife Service during that time that he was in the circle of the low threshold for owls and, if he harvested any timber, he'd be in violation of the take. So we have one Federal agency which was giving him money to stimulate the growth of his timber and another Federal agency which would punish him if he ever cut.

It's that kind of inconsistency that we need to address, and those landowners really do have enough of those situations to where we're trying to offer them the opportunity to work with us.

Senator BAUCUS. I'd like to go down some of the points that John Bloomquist made and see how much the rest of you agree with them.

Number one, I heard him say legislation should more directly address social and economic impacts; more State and local representative government involvement; a lot more, I guess, particularly in recovery plans, essentially, more local hearings so the public has a much greater opportunity to participate. Is there anyone here that agrees with that? Anybody else besides John want to comment on that? Is that a good idea?

We're trying to do that in our legislation. I'm curious whether any of you have any thoughts, pro or con.

Mr. ROY. Senator, certainly, as Dr. Hicks has mentioned, one of the ways we minimize economic problems is to deal with private landowners and small landowners. That's certainly the missing part of the equation. There are capabilities under the act now for large landowners to function with the Fish and Wildlife Service, as we're doing here, but there just isn't the mechanism for small landowners.

We need to look at different economic incentives. We can't rely purely on the good will of the citizens. It's not fair to them. They need to have tax credits or tax deductions for either habitat maintenance or improvement, perhaps systems similar to the success of the CRP program where lands can be held aside for endangered species management.

Senator BAUCUS. That's an interesting concept. You mean you want to use CRP for habitat conservation? Is that the idea?

Mr. ROY. Certainly we are doing it now for soil and various erosion and watershed purposes. There's no reason we can't do that for endangered species purposes, and that's something that can be translated down to a small owner.

Senator BAUCUS. John, do you want to comment on that?

Mr. BLOOMQUIST. Chairman Baucus, I just want to make one comment as far as incentives. We hear a lot about economic incentives. Basically, what we're talking about is providing cash to small landowners for certain management considerations. While that may be acceptable to many, many private landowners do not want to get some of the strings associated sometimes with Federal dollars.

It's not the only answer, is what I'm saying. Dollars to the private owners may not be the only solution as far as incentives go. I think we need to be careful with that and look at perhaps streamlining processes, especially for small landowners, maybe taking away—if somebody puts a cooperative management agreement in

place, streamlining the process so they can go about their business and not maybe have necessarily all the restrictions that are associated many times with Federal dollars, because there are a lot of people that own a lot of private land and a lot of habitat that don't want to get associated necessarily with Federal monies.

Senator BAUCUS. I appreciate that. It's probably not the total solution, but it probably is a partial solution for those who want to participate.

Mr. BLOOMQUIST. That's right.

Senator BAUCUS. Next you mention protecting private property rights. That's another point you made. Basically I took that to mean not trampling on private property rights, but are you alluding to more activities like what Dr. Hicks is suggesting, conservation plans? You say, protect private property rights. What can be done in this legislation to address that?

Mr. BLOOMQUIST. That's one aspect of it is cooperative management planning. I think also there needs to be a strong direction within the legislation to have an assessment, if you will, of impacts of private property, because we still have this Constitutional provision which protects private property rights and requires compensation when government activity restricts that use, and Endangered Species Act designations and critical habitat designations certainly restrict the use, and I think it's not only in the interest of private property owners to have a recognition or assessment of what the agency is going to do and how it's going to impact private property, it's also fiscally sound. It's governmentally responsible to have an assessment.

Federal Government, I don't think, is in a whole lot better shape financially than many other governments. If Endangered Species Acts continue—designations continue to grow and recovery plans continue to multiply, also what will go along with that is more liability to government if those actions take private property.

Senator BAUCUS. You mentioned also, return to species protection. That gets more at preventing species listing in the first place; is that right?

Mr. BLOOMQUIST. That particular portion is partially along those lines, Senator. Also, it is an effort to say, Let's refocus the Endangered Species Act and what it was intended for, not necessarily to further another agenda, whether it's the land use agenda, whether someone doesn't like the fact that you go out and use lethal methods to control—

Senator BAUCUS. How do you suggest we do that?

Mr. BLOOMQUIST. I think that needs to be done in the listing process. I think your efforts toward scientific peer review will go a long way toward making sure that, for a 29-cent stamp, I can't start the process, necessarily. I need to have some good information. There needs to be a process set up where other folks outside of the agency look at—other scientists outside the agency look at the potential listing of the species, so I think you put in place some of these aspects.

Senator BAUCUS. Let's say the provisions in the proposed legislation are enacted. How far will this go toward resolving some of the problems the stockgrowers have, namely, independent scientific peer review; secondly, real meaningful State involvement so the



State is involved in the process. Same with local governments and public participation, hearings, opportunity of public involvement and, add to that, to write into the statute that any recovery plan must minimize adverse social and economic impacts, which is not now in the statute, further legislation to incentives for private landowners to conserve along the lines that we talked about earlier, grants to persons who want to move into that direction as well as this ecosystem approach and so forth?

If all those are adopted and they're all in the proposed legislation now, how far will that go to minimize the concerns that stockgrowers have?

The main point of all these provisions is to prevent more listing by earlier involvement; much more interest on preservation and, second, when there is a listing, much more involvement with local folks, States, and landowners so the recovery plans make more sense. Equal emphasis on delisting as well as listing and, as I said, dollars to help people to work their property the way they want to, the way they want to do.

How far will that go? Are we halfway there? Are we part way there? Where are we?

Mr. BLOOMQUIST. Conceptually, Senator Baucus, you've hit some of the major categories, if you will, of what needs to be changed in the Endangered Species Act by your provision. I think when you started out you made a very good point. This is a good starting point.

I think some specifics regarding scientific peer review, some provisions in your bill allowing the secretary, I believe, to be the party that does that—Secretaries come and go and Administrations come and go and agendas come and go. Perhaps specifying that these will come from—that the National Academy of Sciences will appoint them or whoever so that maybe some of that scientific peer review doesn't have the appearance of being associated with whoever the Secretary may happen to be.

Lend some credibility to the process. I think when we talk about scientific peer review from the users' perspective, land users' perspective, that's what we're really looking for is whether, in fact, these species are threatened or endangered scientifically and whether, in fact, these recovery plans we're putting together will assist in the continuance of the species.

Senator BAUCUS. The intent here is to minimize uncertainty, to write these provisions in the statute because they're not now in the statute.

Mr. BLOOMQUIST. Right. One thing you have in there as far as more—your concept of trying to do more up front is laudable, but when we start looking at candidate species and start to take measures for candidate species, we expand, obviously, the breadth of what we are doing, and unless recovery plans or other measures are in place which allow for flexibility, allow for more State, local input, allow for private landowners, we are going to bear the burden, whether it's candidate species or listed species or whatever. Those things I think need to be balanced very carefully.

Senator BAUCUS. The provisions we talked about; the peer review and so on, how does that bear upon—no pun there—how quickly the bear is recovered, the provisions John Bloomquist and I were



just talking about? Is that going to impede, retard, enhance, accelerate, have any effect? What do you think?

The goal here is to recover the bear as quickly as possible so we don't have to worry about the adverse effects of the Act.

Mr. HICKS. I'll offer quick observations, Senator. I think with regard to the bear we're sort of further down the road here on this, so to speak.

In some aspects, though, in terms of your earlier question, small private landowners may be very well helped by some elements of what you're proposing. One is the emphasis that you've put on identifying the maximum role of the Federal lands in recovery before you ask the private landowners to take some role.

Senator BAUCUS. That's right.

Mr. HICKS. That's very consistent with my message of trying to determine different roles and have a common goal.

Senator BAUCUS. Mike?

Mr. ROY. I would agree, Senator, that, in the case of the grizzly, the more input we could get from the public is going to make a difference. Because of your Act, we're well into the process, but I would remind you there are instances for candidate species when there is a valid role for the Federal Government to maintain a lead.

I'll point to the bull trout as an example. The bull trout goes over five States. We've just had a warranted but precluded decision which puts the burden back on the five separate States to develop five different plans at different time scales with different budgetary situations. We have to bear in mind that there is a valid role for the Federal Government.

Senator BAUCUS. John?

Mr. CRAIGHEAD. It's been difficult for me to follow what's going on here, but I think the agreements in your bill in general will improve the Endangered Species Act. I've reviewed it with my staff, and we've made specific recommendations in our written testimony here, and I think these will be useful to you. I won't try to go into detail here, but I do think one thing that's necessary is to define what we really mean by "wise use."

I think we all support wise use and utilizing our public resources in a sustainable way, and if wise use is sustainable use, then I think we'll probably all be on the same road.

Senator BAUCUS. Thank you.

Chris? Are these provisions going to help or retard bear recovery?

Mr. SERVHEEN. Well, Senator, as you know, as the grizzly bear recovery coordinator of the Fish and Wildlife Service, I cannot comment on the administration's position on your bill.

Senator BAUCUS. I'm talking about you personally, you, Chris.

Mr. SERVHEEN. Yes. I'm no longer a person when I'm here like this.

Senator BAUCUS. That's right. You're not a person.

Mr. SERVHEEN. What I should say and what I can say is that there are significant numbers of people that live in grizzly bear habitat, and how these good people are able to respond to the needs of the bear will determine the future of the bear.

Senator BAUCUS. But the more we delist, the better they are going to be able to deal with the bear in a way that makes sense. The goal here is delisting.

Mr. SERVHEEN. Right. That is the objective under the Act. We are mandated to get species to the point at which protection under the Act is no longer required.

Senator BAUCUS. Will these provisions help accelerate delisting?

Mr. SERVHEEN. No. I think, as the other members of the panel said, in the case of the grizzly bear, we are already well along in this process, and to draw up a series of new provisions, it will probably not help that process.

Senator BAUCUS. Will it retard or hurt the recovery of the bear?

Mr. SERVHEEN. I think it may confuse or compound the efforts, yes.

Senator BAUCUS. I thought, frankly, it would help because there would be more local involvement and, therefore, less litigation and less adversarial relationships between people and States and the Fish and Wildlife Service. That's the intent.

Mr. SERVHEEN. We are totally in support of local involvement, and we want more local involvement, especially these local people that live with the bears.

Senator BAUCUS. We're behind schedule. Thank you very much for your help. Thank you.

We are going to take a five-minute break right now. Thank you.

[Brief recess.]

Senator BAUCUS. Our next panel consists of Mr. John Cook who is the general manager and vice-president of the Columbia Falls Aluminum Company; Noel Williams, a Lincoln County Commissioner; Rick Applegate, director of Fish and Wildlife for the Northwest Power Planning Council; and Jim Baker, Save Our Wild Salmon.

This subject is salmon. It's a little different from bear, and on the grizzly bear panel we worked toward delisting the bear and also some of the problems.

This panel looks at the Endangered Species Act from a little bit further upstream. We know that salmon, in some cases, are on the verge of being listed and in some cases are listed. What we have to do now is figure out how to save the salmon in the Columbia system without bankrupting our State's aluminum industry or wiping out tourism and recreation, and it's an issue that's of great concern to me as to everyone else in the area.

Governor Racicot and I have both made the point recently to Federal agencies that, while we're willing to do our fair share in Montana, it must be a fair share. Other people involved in the salmon effort have to do their fair share, much more than looked like it was going to be the case when the NMFS decision came out.

Not too long ago, House Speaker Foley, Senator Hatfield and I sent a letter to the President pointing out that it's unfair that the Columbia system rate payers have to pay for actions which would be taken to help the salmon. I'm pleased the President agreed, and he has indicated that Uncle Sam will pick up that cost. The rate payers will not pick up that bill. It's a tremendous break, good news for us in the Valley and Northwest Montana.

I'm very thankful that each of the four of you here have a direct interest in the Endangered Species Act differently and also somewhat more specifically with respect to salmon.

Let me ask you to go first, Mr. Cook.

## STATEMENT OF JOHN COOK, GENERAL MANAGER, COLUMBIA FALLS ALUMINUM COMPANY

Mr. COOK. Chairman Baucus, thank you for the opportunity to testify here in the Northwest. It's an area where the Endangered Species Act has already had major impacts on daily life.

For the record, my name is John Cook. I am general manager for Columbia Falls Aluminum Company. No Montana business is more directly affected than Columbia Falls Aluminum by one current ESA listing situation, that of certain wild salmon stocks.

Firstly, I'd like to comment on Senator Baucus's remarks, of the personal thank you, both for the region and the company for the efforts in changing the decision on who paid for the recent spill of water over the dams here in the Northwest. I think that's a good example of where the decision was made with no consideration to scientific evidence, or regard to any economic impact, and it's pretty obvious that the users and rate payers should not have to pay for that decision. Thank you.

Columbia Falls Aluminum Company provides employment for 650 people with a payroll of \$25 million. We pay property tax each year. We make local purchases in the region of \$35 million a year and power purchases in the region of \$80 million yearly. Each one of our jobs indirectly supports two and three others in the area.

Northwest electric rate payers spent \$350 million on salmon recovery last year, and of that we paid between 10 and \$12 million. The rate increases, in part, to pay for salmon recovery efforts add millions of dollars yearly to the cost of producing aluminum and are a crucial factor in our ability to survive. That's why we believe that economic and social consideration must receive specific attention in the Act.

I have some observations under the bill of the Senate here and provisions, and some others that you may wish to consider. My written testimony goes into greater detail on each one of these, but, first, number one, currently no consideration is given to economic or social effects in either listing or recovery plans. Only in the designation of critical habitats are they addressed, but over 80 percent of listed species have no designated critical habitat. One proposal is to have the Act provide a priority for the recovery plan option having the least social and economic costs, and we urge you to consider that.

Secondly, runaway costs of recovery decisions often are made worse by a lack of scientific control or evidence. By incorporating peer review and requiring the proposed listing to identify and clarify additional data needed in recovery plans, your bill would help ensure the employment of what is truly the best science, and we significantly see that as improvement.

Consideration of the economic, social and environmental effects of Federal proposals and actions are currently required under the National Environmental Policy Act in the form of an environmental impact statement. Why not have a similar policy in the Endangered Species Act listing process? It would go a long way toward reversing procedural inconsistency and ensure all factors are considered. We would ask you to consider that.

Your bill giving priority to multi-species, ecosystem based conservation, and to encouraging Federal agencies to conserve can-



didate species before they reach the need for listing will help species while being more cost effective. We support this, and caution that this does not increase restriction on private and public land and resource use.

The definition of species should be clarified. For example, Northwest salmon stock listings. Salmon stock purity has been greatly diminished. Yet there are 214 possible salmon stock listings among four species. We encourage establishment of priority listings with species having greater priority over subspecies.

Most of the work in the Act should be done in the area of Section 7 consultations. These consultations are intended to spell out immediate actions that agencies must take, and may precede recovery plan adoption by several years. Customers of Federal agencies and companies most directly affected must have the right to participate, and it's important that any reauthorization of the Endangered Species Act clearly differentiate between consultation and recovery.

To sum up, there's no ideal answer. The human species exists in this country alongside many other species. There has to be a way in the Act to accomplish species preservation as well as economic development and growth, simultaneously. This can only be achieved, we believe, by following the consulting process that encourages both economic and scientifically based decision making.

We commend you for your courage in taking the lead in this sensitive and emotional issue. Thank you.

Senator BAUCUS. Thank you, John.

Noel, you're next.

#### **STATEMENT OF MR. NOEL WILLIAMS, LINCOLN COUNTY COMMISSIONER**

Mr. WILLIAMS. Thank you, Mr. Chairman, for giving me the opportunity to testify before you today. My name is Noel Williams, and I am a Northwestern Montana tree farmer, chairman of the Lincoln County Board of Commissioners and am currently serving as President and spokesman for the Western Interstate Region of the National Association of Counties.

The reauthorization of the Endangered Species Act has significant impacts for the local economies, local customs and local cultures, and the outcome of your efforts will affect in one way or another the lives of thousands of families throughout the region.

Senator I'm a little bit overawed to find myself in a panel with salmon experts. I certainly am not a salmon expert, nor an expert in much of anything. I found that my job requires me to be an expert only in being a generalist. Nevertheless, I have attached to my testimony additional salmon effects that you may peruse at your leisure, and my comments will be more generally directed toward the Act and all of the listings.

From my travels within the 14 Western States, I can say without reservation that our elected officials at the county level are in virtually complete agreement of the need for change. Our Nation's counties are concerned that the continuing expansion of the number of potentially listable species will present serious problems for our future due to negative impacts on job creation, customary lifestyles, local tax revenues and economic opportunity. Counties believe there is an insufficient recognition of the human, social and



economic consequences during the ESA listing and recovery process and that too often too little attention is paid to State and local efforts.

County officials are also concerned that private property rights are too often, if not ignored, at least constrained rather heavily in the recovery planning process. We recognize, Senator Baucus, and appreciate some improvements incorporated in your proposed bill, but nevertheless, we generally support the language incorporated in Senate Bill 1521 over Senate Bill 921.

As you are painfully aware, over the past few years there have been numerous conflicts developed over the listing of species pursuant to the Act and the recovery planning process that follows. Whether it be a kangaroo rat in Southern California or a spotted owl or a salmon or a grizzly bear in the Northwest, the listing of these species has produced significant human problems. There is certainly no question that in Lincoln County and the rest of Northwestern Montana current ESA mandated activities, restrictions and recovery plans have increased power rates, have constrained recreation and lowered its potential quality, have restricted land managers' ability to manage for bio-diversity, have contributed to higher commodity prices and have severely affected the ability of thousands of humans to live and work in our neck of the woods in a customary and traditional manner.

There has been a great deal of public debate about the wisdom of including or not including social and economic factors during the listing process, and it is the consensus of virtually all of my colleagues throughout the West that, to date, they have not been adequately considered. Businesses, jobs and, indeed, ways of life have been lost to recent listings. These are real people with families, many of whom have not the means to pack up and move to a new region where jobs may be more plentiful. Unfortunately, our community of Libby is one of these.

I am not naive enough to suggest that the potential for economic loss due to the listing of a species should necessarily affect the biological determination of these species' future. However, in retro-analysis it appears that in some cases too little effort is made to examine the science used to make these determinations, and too little peer review and competing science is allowed in the process. The U.S. Fish and Wildlife Service and the National Marine Fisheries Service have too much autonomy over the information and the processes leading to the listing. There are other sources for good science, including academia and, yes, even industry.

There also appears, in too many cases, to have been too little consideration of economic factors in the recovery planning process. Again, biologists are interested in the species and the habitat, not the human implications of their actions. This is the stage where the opportunity exists to factor in economic impact, job loss, job creation and other critical elements into the decisions about the future of the species, the habitat and the human. I believe the historic trend shows too little has been done in this area and that those opposed to multiple and rational use of our Nation's natural resources refuse to accept the model requested of humankind's rightful place in the ecosystem.

Our Nation's counties, particularly those in the west, with which I am most familiar, are not opposed to protection of endangered species nor to habitat protection and stabilization. The issue is how we go about accomplishing these goals. I believe too often decisions associated with the ESA are being driven by an environmental agenda with goals larger than the protection of the particular species. This underlying agenda has skewed the listing and recovery process and has added, sometimes unnecessarily, to the misery of job loss and economic despair.

We need to rise above this approach and find a more balanced way to achieve a positive result. Mr. Chairman, your committee has the wherewithal to create this balance and deliver to the American public a tool that will protect our great diversity of flora and fauna and at the same time better protect our traditions, our economics, our rights and our freedoms.

Many counties stand ready to assist. We are the closest governing entity to the land and the people. We are most affected by the decisions. We know the areas, the habitats, the economy, the culture and the people. Give us the opportunity to be more involved in the process, not just as an outside interested party, but an integral part of the planning process. We are not a special interest. We are the people's interest. I believe we can make a difference.

I have attached to this testimony that I've submitted, three addendums. One is a copy of a resolution from the National Association of Counties relative to their ideas on what should be done in the Endangered Species Act. I've attached a statement from Idaho County, Idaho officials relevant to the impact of the salmon issue in their neck of the woods. I have attached a brief analysis of the detrimental affect of the salmon recovery efforts on Northwestern Montana, and this generated originally in Governor Racicot's office. With your indulgence, I would like to read the last paragraph which sums that up.

If the Endangered Species Act was intended to protect the environment, it's intent is unfulfilled if actions are allowed to protect one native species at the expense of another. Actions should be focused at the immediate root of the problem, not exported to other regions because of political expedience.

A check and balance system must be crafted to assure that actions taken to protect the ESA species are effective for these species and not detrimental to other aspects of the ecosystem.

And that concludes my testimony, Senator Baucus. However, I do have a couple of comments that are timely from my travels just yesterday, if you would indulge me further, or we could put them off until later.

Senator BAUCUS. Briefly.

Mr. WILLIAMS. They are brief. I assure you.

Just yesterday I spent the entire day in Walla Walla, Washington consulting with the County Commissioners from Washington, Oregon and Idaho relative to the east side ecosystem management project as has been mandated by the Federal Government. This is a project that is essentially created by the ESA and driven by the ESA concern, and it certainly does have merits, but merits aside, there was a concern amongst all of the people present yesterday that the anticipation of the results of this in our current land management offices will create such a catharsis in Federal land man-

agement activity that, by the time of implementation, many of our dependent rural communities will be beyond recovery.

Secondly, as I was coming home last night, I was driving through Orofino, Idaho and happened to be tuned into the local radio station, and they were having a discussion of the effects of the salmon recovery on their community, and I was amazed, Senator, at the intensity of the feelings of devastation and abandonment by the Federal Government that those people have. I could easily recognize that as being translated into a hostility toward an ever, more powerful central government. Somehow, you must help us return that power to the people.

Thank you, Senator.

Senator BAUCUS. Thank you, Noel.

I know what you mean on the intensity of feeling. For example, first, BPA came out with a plan which would have the effect of significantly lowering the pool levels in Koocanusa and Hungry Horse, and backing up earlier than that, they had a plan to increase power rates 30 percent, and we got that stopped. It was increased, but not even close to 30 percent. Second, they came up with a plan to reduce the pool levels, and I got a commitment from Randy Hardy of the BPA—first I asked him to come out to the Valley, here in Kalispell, and listen to people so he would get a sense of what was going on, and he did, and he gave us a commitment there would be no further drawdowns of Koocanusa and Hungry Horse.

In addition to that, as you mentioned, we sent a letter to be cosigned by Speaker Foley and Senator Hatfield to make sure the rate payers don't bear the brunt of that, but Uncle Sam was going to have to. We're, as taxpayers, going to pay a little bit of it, but rate payers shouldn't have to pay.

The intensity here is maybe not quite as high as Orofino, but I bet it's about as high as Orofino.

Mr. WILLIAMS. We certainly appreciate those efforts on our behalf.

Senator BAUCUS. Thank you, Noel.

Rick, you're next.

#### STATEMENT OF RICK APPLGATE, NORTHWEST POWER PLANNING COUNCIL

Mr. APPLGATE. Thank you, Senator Baucus. It's good to be with you on another vital issue. Thank you for the opportunity to testify. The council has encouraged cost-sharing in salmon recovery, and we were encouraged by your efforts to step up the level of Federal participation, and we're glad that was successful.

As you know, there's bad news in the Columbia River Basin this year. The salmon runs are in desperate shape. In the Snake River, for example, only about a thousand spring Chinook salmon return above Lower Granite Dam, and that's an all-time low. Projections for the fall run of Chinook are no better.

Salmon runs in the Columbia River are very low this year as well. As a result, both ocean and river harvests are being drastically curtailed, and emergency river survival measures have been undertaken. These actions have clearly been controversial, and no one is certain they will, in fact, succeed.



We know there are many reasons for the decline in the salmon runs. Human caused developments, including dams, historical overfishing, poor hatchery practices, can all be blamed. So can damage to spawning and rearing habitat, as well as—especially over the last couple of years, much of the drop in the runs can be attributed to a six, seven-year drought that we've been experiencing, but more recently I think the clincher has been the decline in ocean feeding conditions. We have a very poor ocean condition for salmon at the present time.

The runs are declining in spite of substantial and intensified regional efforts during the last 12 years to improve their survival. Twelve years is only about three generations of salmon, and so it's still too soon to gauge success, still too soon to admit failure.

I don't want to give you the impression the efforts have been problem-free. There are substantial biological uncertainties that we're encouraging scientists to help us resolve, and as I mentioned, there are natural changes, natural impacts that are beyond our ability to control, but we know that a successful salmon recovery program has to be able to accommodate those uncertainties, and it has to be able to withstand adversarial conditions, just as the salmon runs were able to do when they were at healthier levels. Otherwise, the runs could not be lost.

The recovery efforts must improve salmon survival at each stage of their life cycle. There's no one magic solution to this problem. We know that. To do that, everyone who has benefitted from development of the Columbia River must contribute, and we're trying to ensure that no one has to contribute unfairly.

Fortunately, the region has a rebuilding program in place. It's the council's strategy for salmon, and with some exceptions, it's being implemented. It's comprehensive. It's designed to protect all Columbia River stocks, not just those protected under the Endangered Species Act, and we think that's the only way we can get off the Endangered Species treadmill. The region should continue to implement that strategy while the National Marine Fisheries Service works on a recovery plan. We can't put off action for six to eight months while they're doing that.

We appreciate the work that NMFS has done with their recovery team. We're ready to work with them in the implementation of salmon recovery maintenance. However, in order for that to be effective, we need to be more directly involved in the Federal consultations and other procedures under the Endangered Species Act. The States and the Power Planning Council must be given a meaningful, more participatory role in those consultations. The governors have requested this, and we believe it can be accomplished with a stroke of a pen.

Meanwhile, we are going to continue to refine our strategies for salmon, because when we adopted it, our analysis indicated that the measures in the strategies by themselves would not be sufficient to protect all the weak runs or to rebuild the population to levels that would sustain the fish here in the future. As a result, then, we called for careful, detailed scientific investigation of additional measures to further improve survival. This includes water conservation, additional storage in the Snake River, the controversial drawdowns and so on, and this summer we're going to be re-



viewing the information that resulted from those reports and from other recent scientific efforts, and we've requested ideas for new actions as well. We'll take those up in a formal rule-making process that we anticipate will run through the fall, toward the end of the year.

I should say, Senator, that included in the actions that we're going to be considering is consideration of new operating rules for Hungry Horse and Libby Reservoirs. As Noel Williams mentioned, that's very important to Northwest Montana. We've been aware of that for some years, and the State of Montana has concluded a proposal that they're submitting to us to consider.

I want to stress the challenge in the Columbia River goes beyond the Endangered Species Act, and I think we need to focus much broader than just the Endangered Species Act. Whatever its strengths or weaknesses—and you're hard at work on those; it's encouraging and warming—it's not the only legal mandate to rebuild salmon runs in the Columbia River Basin.

The Power Act calls for that, the one that created us. So do the treaties with the treaty tribes in the Columbia River Basin, and so do our national commitment made under the Pacific Salmon Treaty with Canada, that both we and Canada will go beyond engaging in any annual harvest wars and seek to rebuild our naturally spawning population of salmon. All these obligations go beyond the Endangered Species Act's effort to prevent extinction.

Our council mandate says more than just stopping extinctions. We seek to rebuild runs to levels where the region can enjoy a sustainable fishery, and we believe our region wants to do that. We also know, however, in conclusion, that we must accomplish that in a way that preserves the affordability of the power system and does not undermine resident fish and wildlife populations that we're also trying to rebuild. We're going to try to do this in a cooperative way, an open, public way.

We hope the region can proceed on this issue to a successful conclusion, more like we've seen with the bald eagle and the grey whale, than the experience we are now involved in with severe disruptions and contentiousness with the spotted owl issue.

We appreciate, again, Senator, your continuing interest in finding solutions to these difficult issues and your leadership to them, and we will continue to seek your guidance as we consider additional measures for salmon recovery. Thank you for the opportunity, again, to testify, and I'll be happy to answer any questions you have.

Senator BAUCUS. Thank you, Rick.  
Jim, you're batting cleanup.

#### **STATEMENT OF JAMES BAKER, NORTHWEST SALMON CAMPAIGN COORDINATOR, SIERRA CLUB**

Mr. BAKER. Good morning, Mr. Chairman, and on behalf of the 500,000 members of the Sierra Club, I want to thank you very much for the opportunity to testify before this committee today. For the record, my name is Jim Baker and I serve as Northwest salmon campaign coordinator for the Sierra Club, a founding member of the Save Our Wild Salmon Coalition. I also staff our organization's Columbia Basin field office in Pullman, Washington.

You have my rather substantial prepared statement and enclosed documents, so fasten your seat belt, Senator. I'm going to have to talk fast.

Mr. Chairman, the Endangered Species Act is a good law that fully merits reauthorization by the Congress. If looming extinctions have created crises here in the Northwest and elsewhere, their fault lies primarily not with the Endangered Species Act itself but, instead, with the failure of the Federal agencies to act properly and promptly to implement the Act.

What the bald eagle is to the Nation, the salmon is to the Pacific Northwest, environmentally, culturally, and economically. Sadly, these magnificent creatures are slipping dangerously toward extinction. Today the annual spawning run of Columbia-Snake salmon has dropped below 2 million adults, and of these fewer than 300,000 are wild.

Wild salmon and steelhead are absolutely essential because without a regular infusion of wild genes, hatchery production quickly collapses, too. In other words, no wild fish, no salmon at all.

Fortunately, there are scientifically sound, workable and affordable solutions for salmon recovery. We would point specifically to the strategy for salmon from the Northwest Power Planning Council, the detailed fishery operating plan from the Columbia Basin Fishery and Wildlife authority, the forthcoming recovery plans from the Save Our Wild Salmon Coalition and the Columbia River Inter-Tribal Fish Commission.

Unfortunately, the Bonneville Power Administration and the U.S. Army Corps of Engineers have brought these workable recovery strategies to a standstill, have substituted their own brand of biology and professional judgement on the duly established fishery agencies and the tribes, and have pushed their own failed programs of yesteryear. As a result, because BPA and the Corps have not implemented any of the alternatives, the National Fisheries Service must call for more and more releases of water from upstream storage projects like Grand Coulee, Libby and Hungry Horse.

As a result, the States and tribes are forced to go to the courts for redress, and as a result, U.S. District Judge Malcom Marsh found the BPA and the Corps in violation of the Endangered Species Act.

Now, I understand and I share very broadly the anger and frustration that this committee has heard today from Mr. Williams and Mr. Cook, but blaming the salmon and Endangered Species Act will accomplish nothing except to bring real damage to the Northwest economy. I make this assertion because the legal requirements for salmon recovery go well beyond the Endangered Species Act to include the Northwest Power Planning Act, the Madison Act and the Pacific Salmon Treaty with Canada. In point of fact, the salmon crisis is driven most fundamentally, not by the U.S. but, rather, by the treaty signed in 1855 between the U.S. and the sovereign American Indian tribes in the Columbia Watershed which guarantees these tribes a right to salmon in perpetuity.

As a representative of the Sierra Club, I cannot and do not speak for the sovereign tribes. However, with salmon management of the Columbia Watershed, it is reasonable to conclude, given to recent

rulings already by the courts, that the tribes would prevail in obtaining reparations, paid annually and in very large amounts. Since extinctions are forever, so too would be the reparations, and extinctions, not salmon recovery, would inflict the real damage to the Northwest economy. Complaints about the ESA amount to shooting the messenger.

While Montana will admittedly never see a salmon swimming in its rivers, the State, as part of the regional hydroelectric grid, has a vital stake, indeed, in seeing to the recovery of these fish.

Finally, I would like to focus on that the BPA and the Corps can proceed with salmon recovery while minimizing the call on Montana water. First, it is vital to recognize that the pools behind Libby and Hungry Horse dams fluctuate up and down primarily because of the demand for hydroelectric generation, not because of the salmon, to the extent that salmon recovery does put an additional call on the water and upstream projects.

BPA and the Corps can limit impacts on Montana in two principal ways: One, arranging for more releases from Canadian-stored water and, two, operating the John Day Reservoir on the Lower Columbia at minimum operating pool. According to the Northwest Power Planning Council staff, lowering the John Day Reservoir on the Lower Columbia by approximately 10 vertical feet to its minimum operating elevation provides water velocities equivalent to 3.1 million acre feet of flow augmentation or roughly the entire storage behind Hungry Horse Dam.

In other words, the Corps of Engineers can proceed in one of two ways. Either they can pull John Day pool down a little, or they can pull upstream storage a lot. This single best way to limit releases of Montana water has received support from the governors of Oregon, Idaho and Washington State as well as both Federal and fisheries agencies. Thanks to foot dragging and opposition by the Corps and BPA, it has not happened and may never happen.

Clearly, your leadership, Mr. Chairman, is needed to secure funding and force Federal agencies to proceed with the lowering of John Day pool at the earliest date.

Thank you for the opportunity to testify before the committee today. I apologize for exceeding my time limit despite as speedy a voice as I could get.

Senator BAUCUS. You're the first one, nobody else did.

Rick, you mentioned something about declining ocean feeding conditions contributing to the problem. I've not heard anybody focus on that. What's going on there, and how much of a contributive cause is that?

Mr. APPELGADE. I think it's a very significant cause in recent years. There's no question the ocean has been a severe problem in the last couple of years.

In the past, you probably heard of the El Nino effects, which adversely affected ocean feeding. Those were typically short term. We're more nervous now about the longer term cycle.

There's a current off the West coast of Vancouver Island. In brief, the way that current splits in favor of feeding conditions for Alaskan salmon, at the same time disfavor feeding for Northwest salmon. I kind of think it's going on right now, because if you recall, in the past several years there's been a significant run of salmon



into Alaska. We think that current will shift, will switch over time and will cycle back in our direction, but as long as it doesn't, it will probably adversely affect the runs coming back to the Columbia River.

What we are going to try to do is pay more attention to the ocean and see if there aren't some ways that we can make some adjustment in our recovery effort based on the cycles that occur there. We aren't going to be able to change those cycles, but we do need to recognize them.

Senator BAUCUS. What do you do? You can't change the ocean, so what do you do about that?

Mr. APPLEGATE. I think you have to address more aggressively the human side of the equation. Unfortunately, in the past it's clear when these runs were healthy they could sustain these natural cycles. As the runs declined, though, they get closer to the extinction level, there's more difficulty when natural conditions turn against them. So we're going to seek reasonable ways, I think, to improve the human side of the equation, and that's what we'll be looking at later this fall.

Senator BAUCUS. As you know, one of the provisions in the bill is better State involvement.

Mr. APPLEGATE. Yes.

Senator BAUCUS. Your thoughts on how to make that work so it's not a buzz word but actually does work.

Mr. APPLEGATE. I think the council has talked about this some with the administration. One particular way we stressed is that the Section 7 consultations under the Act now are essentially closed. We've received—

Senator BAUCUS. Closed to the States.

Mr. APPLEGATE. Pardon?

Senator BAUCUS. Closed to the States.

Mr. APPLEGATE. They're basically closed to everyone but the Federal river operators at this time, and all four governors and council have suggested that that needs to be changed, that that process needs to be opened up.

In addition to that, I suspect there are ways for the National Fisheries Service, Fish and Wildlife Service, Bonneville, the Corps and the Bureau to consult more closely along the lines of some of the meetings you've had so they generally get input from the local communities prior to the time they have to make a controversial decision.

I guess there's one other area that's important. We think it's very important to have cooperative local initiative and habitat improvement. We don't think you're going to be able to improve the habitat solely by some kind of regulatory force from outside, and I was very pleased to hear of the work that Representatives Knox and Swanson are attempting to bring together groups that in the past have had very good reason to compete and contend on these issues. We're trying to do the same thing in habitat for the Columbia River Basin, a model watershed that is bringing together the environmental groups, the landowners, the local governments, the tribes in the area and have them fashion a habitat protection and improvement plan, and we have work underway in Idaho and Oregon and Washington, and we hope that's going to spread. We're



going to start some in Montana as well, and that will help improve the situation.

Senator BAUCUS. What can we write in the statute that encourages better cooperation? What statutory provisions do you think we should write into law?

Mr. APPLEGATE. Chairman Bottiger of the council has strongly recommended incentives, I think, along the lines you are considering in your legislation. If you're going to ask people to make an improvement in habitat, I think it's useful to have some good reason, to have some encouragement for them to do that beyond just the threat of listings in the Act, so some kind of incentives along the lines you might be speaking in your Act might be appropriate. We haven't looked at those closely, but it seems reasonable.

Senator BAUCUS. What about the county involvement, like Mr. Williams suggested? You're from Lincoln County.

Mr. APPLEGATE. That's true. I grew up in Libby before and after the dam.

Senator BAUCUS. Exactly, so how can we be sure that counties are involved here?

Mr. APPLEGATE. I think that's very important too. In these model watersheds I mentioned for habitat activities, we have tried to involve the counties and the cities and town governments.

Again, I think a more open process that provides people an opportunity to be involved early in the comment should let everyone in, and I know the fear is that that can be more cumbersome, take more time and, in some ways, be more contentious, but I think our views in the long run give a better chance of solving these problems, and people are raising their issues early rather than waiting until a crisis time when decisions are being made.

Senator BAUCUS. What about that, Jim? Would earlier involvement cause a lot more people to state their views and state them forcefully and vigorously and delay the time in which an action might be taken to prevent further decline of species?

Mr. BAKER. In many respects that's the tragedy that we're faced with the looming extinctions in the Columbia Watershed. The decline of these fish is not new. The National Fisheries Service had under active consideration a petition to list various stocks of salmon back in the 1970s, decided not to go forward with those listings, and then the Congress passed the Northwest Power Planning Act, but the decline has been measured for some time.

The fact of the matter is that the U.S. Army Corps of Engineers built, for the Snake Basin fish in their migration corridor, eight huge dams without any provision whatsoever for downstream passage of salmon. It always can get upstream on ladders and spawn, but their prodigy face a gauntlet of turbine blades and slight water reservoirs that they're ill-equipped to deal with.

This has been a known scientific problem for many, many years, and the fact of the matter is that we simply haven't got ahead of the curve. Your colleague, Senator Hatfield from Oregon, handled the Salmon Summit in 1990, 1991, because the conditions had been provided for listing fish in the Snake River Basin. The kind of recommendations that I've been talking to you about this morning, like lowering John Day Reservoir to minimal operating pool, came out of the Salmon Summit, and absolutely nothing has happened.

Senator BAUCUS. Canada has agreed to release more water, hasn't it?

Mr. BAKER. When you invited Administrator Hardy to come up to Montana and hear the concern, I understand it was delivered in a quite heated session for the administrator. The administrator went back to Portland and duly talked with the Canadians and was able to come, lo and behold, bring Canadian water down from MICA Project and other storage projects in Canada so that the level of—the elevation of Lake Koocanusa could be kept higher than it would have been. This demonstrates to me that BPA does have the ability to broaden that release of Canadian water.

With the Columbia River Treaty of 1961 and separate contractual agreements, BPA has access to eleven and a half million acre feet of water. Now, the Canadians do demand a very high price for that water under the treaties and under the contracts, but it can be released for fish flows.

Senator BAUCUS. What about provisions in the bill requiring recovery plans to minimize adverse social and economic impacts? Aren't you, as a member of the Sierra Club, worried about that? Aren't you worried that's going to slow down recovery plans and add in provisions in recovery plans which is going to retard, not speed up, recovery?

Mr. BAKER. Well, we feel that the Act in its current form has important flexibility to meet challenges of economic impacts and implementation of recovery plans.

Senator BAUCUS. So that doesn't bother you?

Mr. BAKER. In the case of salmon, I have to say that what we are dealing with is trying to maintain a good, strong, healthy economy in the Northwest. The extinctions, as I say in my remarks, will cause far graver economic damage than ever could be inflicted by any recovery plan I know of along the taking. You have communities—

Senator BAUCUS. You mentioned that.

Mr. BAKER [continuing]. Waning because of the extinction of these fish.

Senator BAUCUS. What about that, Noel and John? Do you think extinction is a more devastating alternative compared with the one we have now in trying to work with the ways to properly preserve the salmon?

Mr. COOK. I can't wait to comment to those remarks.

I'm not a salmon expert, but I am an aluminum expert. The aluminum industry puts \$2 billion worth into the economy of the Northwest, and the aluminum industry is in dire threat of dying. The reason is power costs.

Senator BAUCUS. And aluminum prices?

Mr. COOK. Aluminum prices, but whatever happens to power, you can no longer be competitive. We're approaching that position very rapidly.

Water is available in Canada at a cost. Who pays? The rate payers pay, and I find it fascinating that we spent \$350 million on salmon recovery last year. We're going to spend \$350 million this year and probably a hell of a lot more next year on the same thing, to find that the return of the salmon are decreasing.

I'm not questioning spending the \$350 million. I'm questioning whether we're spending it correctly, and somewhere in the bill there's got to be a provision for the economic and social justification of spending this money, or we're going to drive industry out of the area.

Senator BAUCUS. In your view, are aluminum prices down because of dumping by the former Soviet Union republics and Eastern European countries?

Mr. COOK. Yes. There was a huge amount of Russian metal that came into the Western world which drove the aluminum prices down. We appear to be over that as a result of some of the efforts you did yourself, by the way, to get the administration to pressure the Russian government. Thank you again.

Senator BAUCUS. John suggested that perhaps NEPA could be a model here. Statutes requiring agencies to develop alternative recovery plans, not just one. What do you think, Jim?

Mr. APPLEGATE. Senator, I don't know how that would work under the Endangered Species Act. In the case of our own council's issues, we try to lay alternatives for the council members to look at, just like you would do if you were writing an environmental impact statement.

I'd like to add, too, under the Northwest Power Planning Act, we do consider and are considering affordability, the reliability, the economy and the power system, and if we have two ways of achieving a biological objective and one is cheaper than the other, that Act requires us to use the least cost method.

So I think it is helpful to have alternative proposals pending before you have decisions, and I think it is very helpful to have independent peer review of those on the scientific merits, but we certainly tried to do that—

Senator BAUCUS. Noel, what's your thoughts about whether these provisions, which appear in these charts here, are going to address your concerns? People are worried about jobs, not enough attention paid to social and economic impacts, the power rates have gone up, private landowners are not really able to participate, find a solution that's meaningful to them. We need more science and peer review. The Fish and Wildlife Service has too much autonomy. The provisions shown in the charts were designed to address those concerns, and I'd like your view as to whether you think they do or not.

Mr. WILLIAMS. I will address that, but if I may, I'd like to address the last topic about whether we agree that extinction should take place rather than having severe social-economic—

Senator BAUCUS. Sure. I was going to ask you that.

Mr. WILLIAMS. Thanks.

Certainly, we do not encourage extinction of any species. That's unthinkable, unless maybe the mosquito.

Our position is that there are many ways in which recovery plans can be drafted, and some of the current plans have not resulted in a couple of things. One, they have not resulted in effective recovery, and two, they have resulted in serious economic and social damage that might not have been affected had the recovery plans been drafted in a different fashion.



It's a matter of choices. I mean, I think some bad choices have been made and I guess I get back to some of the testimony that I omitted for the sake of brevity. It's very short. I'll read it to you.

Let me use the health care metaphor. This is certainly relevant to what we are talking about. If a person is diagnosed as having cancer, the first prudent thing to do is get a second opinion. If that independent second opinion concurs with the first, the person is listed with cancer. Now, there are many treatments for recovery, each with its potent and damaging side effects. Again, different positions of scientists may prescribe different treatments to achieve the same result, healing the patient. Before a treatment regime is selected, all the factors should be included, effective people need to be consulted and only then a decision is made. This is the way the Act should work and all too often doesn't.

Back to your question about how I feel relative to the amendments and suggestions you've made. We do appreciate those. They are improvements. There is no question about that.

According to the analysis we have received—and I'm certainly not a legislative analyst myself—the peer review in your bill appears to be more limiting that we'd like to see it. We certainly agree with your ecosystem approach. That's a definite plus in this bill. The fact the States have more say and are consulted is certainly a plus, although it appears that it simply requires consultation with them but not necessarily concurrence. So that may be a negative. There appears to be no—no item in your bill that would mandate local involvement, at least local government involvement.

I would like to see—we would like to see a NEPA type of process involved in the recovery, the recovery options. We recognize that this requests the secretary to seek to minimize adverse economic conditions, but it really doesn't mandate anything. He can take a look at it and do whatever he wants.

We are a little bit concerned that your bill requires mandatory Federal protection for candidate species before they're listed, or it appears to, at any rate. We would like to see additional items relevant to compensation for loss of private property values. We feel that it is all America that benefits from the Endangered Species Act, from protection of America's wildlife, flora and fauna species. We think all America should pay the cost of that, rather than those that have made investments based on the private property rights and freedoms that America has guaranteed. We think there should be some additional limitations in your bill on the taking provision.

Senator BAUCUS. Thank you very much.

Thank you all very much for your testimony. I appreciate your coming.

The next panel is entitled Getting Ahead of the Curve, Bull Trout. The panelists include Chris Hunter, who is the bull trout coordinator of the Montana Department of Fish, Wildlife and Parks; Mr. Jim Stone, manager and president of Blackfoot Challenge; Mr. Bruce Farling from Trouts Unlimited; Dr. Jack Stanford, who is the head of the Biological Research Station up the road on the lake.

With this panel I'd like to focus on what we can do to prevent the Endangered Species Act from listing species in the first place. I think all of us agree that the better approach is to prevent a listing as much as possible because, once a listing occurs, then certain



confrontations tend to occur, but if we can prevent a listing in the first place, take more preventative action up front, it's more likely that we're going to solve a lot of problems that we otherwise would have. An ounce of prevention is worth a pound of cure.

I know each of you have been thinking about this question, and I'll let you begin, Chris, right off the top.

**STATEMENT OF CHRIS HUNTER, CHIEF, SPECIAL PROJECTS BUREAU, FISHERIES DIVISION, MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**

Mr. HUNTER. Thank you, Senator.

My name is Chris Hunter. I work for the Fisheries Division of the Fish, Wildlife and Parks where part of my responsibilities include coordination of our efforts on species, fish species of special concern, and I appreciate the opportunity to speak to you today from the standpoint of a State employee who works with the Act on a daily basis.

You asked us to address two questions, how the ESA has worked to further bull trout restoration and how it can be improved. I'm going to try to answer those using grayling and bull trout as examples.

With regard to the first question, how the ESA has worked further, in this case, grayling restoration, very little. We began working on the grayling restoration in 1987, when we formed an inter-agency work group to start looking at recovery of grayling. We have made a lot of progress in the intervening seven years. We've identified a number of habitat problems. We've identified a number of streams where we think we can be successful reintroducing grayling and reaching our restoration goal, but we find ourselves, and this is when we get to how it can be improved—in a bit of a Catch 22 situation.

When we approach landowners, both public and private, about reintroducing grayling into waters that traverse their lands, there's some concern that if the fish is listed somewhere down the road that they will face constraints and loss of property values, and so they're not as likely to let us reintroduce the fish in those waters, and so we're not able to reach the recovery goal. There has to be some mechanism, some certainty to provide it so that those folks who are willing to work with us to recover these fish have some assurance that they won't be put in that position somewhere down the road.

With regard to bull trout and how the ESA has worked to further bull trout restoration, I think that the main thing it's done is provide additional urgency and given it a much higher profile than what it had previously. The Department has worked on bull trout since the early 1950s when we started. I think it was in the mid-1950s we started closing important spawning tributaries to the North Fork of the Flathead, and we've taken progressively more protective action ever since.

In early 1992 I contracted with a consultant to prepare a status review on bull trout in Montana. That review actually, I think, formed the basis for the petition for listing. We had begun working on a recovery plan before the petition to list was received by the Fish and Wildlife Service, but there is little question that when

that petition was received the effort took on, like I said, more urgency and became much more higher profile. When people started referring to bull trout as our spotted owl, people became a lot more interested in bull trout recovery.

In December of 1993 the Governor held a bull trout round table in Missoula to try and get out as much information to people about the status of the fish, get some ideas on recovery and to jumpstart that recovery planning effort. Since that time, we have formed a bull trout restoration team which is composed of eight or nine people representing various Federal and State land and water management agencies as well as the tribes and some private organizations. They are giving overall direction to bull trout.

They, in turn, have appointed a scientific group which consists of eight or nine scientists from a similar spread of entities, and they've been working on developing recovery plans for the 13 different bull trout management areas in the State. In addition, they have prepared a list, just recently, a list of actions that they feel can be taken immediately to benefit bull trout.

We will soon be working with local watershed groups to add additional detail to the restoration plans that are prepared by the scientific group, and we think that these local watershed groups are going to be key to the planning and to the implementation of recovery.

I was going to talk a little bit about the Blackfoot Challenge in particular as a model for watershed groups, but Mr. Stone is now on the panel, and I think he can do that a lot better than I can, but my point is the State restoration team, the scientific groups, the watershed groups are all, we think, key to recovering bull trout in Montana, and yet none of these has any standing under the Endangered Species Act.

Again, we feel that there's a need for some certainty; that we're asking a lot of people to devote a lot of time to developing bull trout restoration but with very little certainty as to how or if that will be accepted down the road. Thank you.

Senator BAUCUS. Thank you very much. That last point is the one I want to expand upon a little bit later. Thank you.

Jim?

#### **STATEMENT OF JIM STONE, BLACKFOOT CHALLENGE**

Mr. STONE. Great, thank you, Senator, for having me here.

My name is Jim Stone, and I represent the Blackfoot Challenge.

The Blackfoot River has tributaries in Ravalli and has always been and will continue to be my favorite place to live, work and play. This favoritism is obviously and easily justified. The Blackfoot Valley has the slopes of the Rocky Mountains as its backdrop, a variety of vegetation and landscapes to give it its color and texture and the people to provide the character and culture that intimately provides the nostalgia of our American heritage. Very few places in this great country can anyone find this combination and ultimate attraction without wanting a part of it.

The Blackfoot Valley is unique not only because of its landscape but by virtue of the people. On behalf of the Blackfoot Valley and its people, it was felt that a coordinated effort was needed to insure

the people's interests were being considered simultaneously with the concerns for the river and its valley.

To accommodate the variety of interests in the valley and exclude a single dictating body, a group of individuals with foresight identified a need to promote and coordinate efforts. This group of individuals consisted of landowners, residents, recreationalists, special interest groups, Federal, State and local agencies, and other interests came together to talk. This group also felt there was—would be a great benefit to the valley and its people if all interested people could work together and address a multitude of concerns being raised in the Blackfoot Valley and consider the human effects as a unified body.

It is apparent that the valley is no longer a secret. Montana has been advertised as the Last Best Place, and the Blackfoot River is the river that runs through it. One of the most desirable trout runs between Glacier and Yellowstone traverses the Blackfoot River. With this national notoriety, however, the people who live, work and play in the valley are willing to manage for the future, keep the area's quality of life and retain the area's desired characteristics.

Knowing that 44 percent of the valley is managed by two national forests, 5 percent by the BLM, 7 percent by the State of Montana, 20 percent by Plum Creek Timber Company, 24 percent by private ownership, there becomes an obvious need to coordinate effort. The tie between these land stewards is the Blackfoot River, and it's the tie that initiated the Blackfoot Challenge.

The Blackfoot Challenge is a group of people that represent the valley, the river and the people, thus, the mission of the Blackfoot Challenge. The Blackfoot Challenge is a form of proposed cooperative resource management of the Blackfoot River, its tributaries and adjacent land. The mission is to coordinate efforts that will enhance conservation and protect the natural resources and rural lifestyles of the Blackfoot River Valley for present and future generations.

We support environmental and responsible resource stewardship through the cooperation of public and private interests. To accomplish the mission, all our goals have been developed providing a form for tidy distribution of technical and topical information from public and private sources, foster communication between public and private interests to avoid duplication of efforts and capitalize on opportunities, recognize and work with the diverse interests in the Blackfoot Valley to avoid confrontation, examine the cumulative effects of land management decisions and promote actions that lessen their impacts on the Blackfoot Valley, provide a form of public and private resources that resolve the issues.

The Blackfoot Challenge is organized as a steering committee which is supported by an information committee, public relations committee, legal committee, private lands committee and a resource committee. There is no formal membership, and it's open to any and all who are interested. Currently, it is the largest coordinated research management in the State of Montana.

I guess I probably really didn't address why we're here, but probably in the sideline, I think because we facilitate a basin-wide cooperation, I think that we've proven through some success, I think,



in the recovery of the bull trout in the Blackfoot and its tributaries, that these coordinated efforts are a great success and well worth the time and effort put into them.

I thank you very much for your time.

Senator BAUCUS. Thank you very much, Jim.

Based upon the one day I spent up there working, I'm one of Blackfoot Challenge's greatest fans. It was a very big eye-opener for me on just what can be done with local cooperation in spite of various people's organizations' supervisors, which often get in the way. People on the local level are getting the job done and reducing siltation which prevents spawning. Very impressed with it.

Mr. STONE. Thank you for your support.

Senator BAUCUS. Bruce?

### STATEMENT OF BRUCE FARLING, MONTANA COUNCIL, TROUT UNLIMITED

Mr. FARLING. Thank you, Senator.

For the record I'm Bruce Farling, and I'm a small woodlot owner and a resident of Florence, up the Bitterroot, and executive director of the Montana Council of Trout Unlimited.

Thanks for letting us speak today.

The Montana Council of Trout Unlimited is comprised of 1700 individual members and 13 chapters or affiliate groups. Like our national umbrella organization, we strongly support the Endangered Species Act, and we recommend that reauthorization focus solely on changes that strengthen instead of weaken the law's capacity to recover populations of disappearing species. Your bill, Senator, we think takes significant strides in that direction.

I've been asked to address, as has Chris, two topics. The first: How has the Act worked to further bull trout restoration? Frankly, the Act has not been allowed to further bull trout recovery because the U.S. Fish and Wildlife Service has decided that, though the fish deserves ESA listing, the agency believes it should be precluded from such status. Nonetheless, the 1992 petition for listing, coupled with strong evidence the fish deserves such status, convinced the State of Montana to begin a serious recovery effort. The State admits the possibility of ESA intervention prompted it to establish its cooperative recovery venture in order to influence potential Federal restoration plans.

Though the bull trout has been a Federal Category 2 species, a Forest Service sensitive species, and State of Montana species of special concern since various times in the 1980s, very little has been done by State or Federal agencies, aside from limiting harvests years ago, until it appeared, the Fish and Wildlife Service would step in under the ESA. Ironically, Senator, if the provisions of your bill were in place now, the fish would be listed. That's because bull trout are the type of ecosystem linchpin species your bill seems to contemplate as being a priority for listing. Habitat protection and restoration for bull trout, especially in riparian areas, would directly benefit many other species, including fish, birds, mammals, amphibians and invertebrates, that use the same watersheds and which are recognized as imminently imperiled under the ESA or by other Federal and State designations.

In Montana, for example, populations of westslope cutthroat trout, inland redband trout—that's the native rainbow—torrent sculpins, shorthead sculpins and white sturgeon are in jeopardy. They need some of the same habitat elements as the bull trout they co-exist with. An effective recovery plan for bull trout would help keep these fish off the Endangered Species list, a benefit the Fish and Wildlife Service, in our view, despite its stated commitment to ecosystem management, overlooked when pondering the bull trout listing. The presence of a stable, robust bull trout population is a good sign of a naturally functioning watershed, which in turn is one of our best understood indicators of larger ecosystem health.

You've also asked how the ESA could encourage more cooperative efforts such as Montana's bull trout program. We believe it's still premature to encourage similar efforts, and I say that even though Trout Unlimited has long been an enthusiastic supporter of collaborative efforts. In fact, we're one of the outfits that chartered the Blackfoot Challenge, and we do support Governor Racicot's efforts.

However, Montana's bull trout restoration effort has yet to produce much, and though we believe Governor Racicot is sincere in his efforts, it's yet to be seen whether other critical partners in the venture are equally as sincere. If they aren't, this process will fail.

For example, in the two years since the petition was filed and, more recently, in the time since the decision was made not to list, neither the State of Montana, Forest Service, Fish and Wildlife Service, Federal power providers or private industry have discussed, let alone implemented, any interim strategies for protecting bull trout populations during the period, right now, before a permanent plan is on the ground. Remember, this is a species the U.S. Fish and Wildlife Service has said should be listed because it's, indeed, in trouble.

The Northern region regional forester and Montana's BLM director so far have ignored a recent Trout Unlimited request asking them to implement an interim protection strategy similar to one being used or recommended for salmon in the Northwest. If we can't get a meaningful interim strategy without pressure, how can we get a permanent solution that is voluntary? So far, Governor Racicot's process has provided no clues. We worry that without a legal prod like the ESA that this volunteer process will flounder.

We recommend that cooperative efforts be encouraged more in the ESA, but that they be given a specific time limit to work, depending on the immediacy of the species problem. This would help discourage foot-dragging and reluctance by cooperators to make hard decisions that need to be made.

Finally, a key way to improve future Federal-State collaboration and prevent ESA listings is to provide financial incentives, some of which are in the bill. We strongly recommend other Federal funding sources be developed—and some are on the drawing board—to help improve State non-game species programs, which could be some of our best vehicles for heading off many extinctions. Montana's program unfortunately is somewhat lacking, largely because the State doesn't take it seriously enough to figure out better ways to fund it.

In addition, we also recommend targeting other Federal funds—and you seem to indicate you agree with this in your bill—such as EPA non-point source pollution dollars for projects that would help critical aquatic systems. We believe it's crucial to coordinate all existing State and Federal environmental protection programs so that they bolster habitat protection and prevent listings.

If these States want more Federal money and a larger role in ESA decisions—and Montana Trout Unlimited strongly believes they should have both—they must correspondingly increase their financial and management commitments to prevent extinctions. Governor Racicot's bull trout venture is an important but incomplete step in that direction.

Thank you, Senator.

Senator BAUCUS. Thank you, Bruce, very much. I appreciate it. Jack?

#### **STATEMENT OF JACK STANFORD, UNIVERSITY OF MONTANA/ YELLOW BAY BIOLOGICAL RESEARCH STATION**

Mr. STANFORD. Mr. Chairman, I am Jack Stanford, Bierman professor of ecology at the University of Montana and director of the biological station up the road. I am pleased to be here.

I want to depart from my prepared testimony and address a couple of things that came up repeatedly in previous panels because I think they're germane to the question you gave to us. First, I applaud these provisions that you have for, one, promoting ecosystem conservation. I think that's critical. That's one of the things that the scientific community is definitely interested in fostering and, secondly, the provision to insure sound scientific decisions. There's no scientist that wouldn't go along with that, and in all of the review work that I've done in recent years, that need for peer review is underscored over and over.

The problem with that one is that there really are a limited number of scientists out there, particularly those of us in the academic community, that can respond effectively to these broad-based issues that are encompassed under the Endangered Species Act. Our plates are very full. It's very difficult right now, as an editor of peer review processes and so on, to get a scientist to respond to requests for peer review, and I think you're going to have to take a look at the way in which resources are allocated amongst the various statutes to help respond to this, because every agency has now recognized the need for peer review, and they're asking for it.

Let me give you an example. The ecology program budget at the National Science Foundation is about \$10 million a year. Not billion. Million. That's for the entire United States. You would not have good peer reviewers unless they're working hard on basic research questions. The national expenditure on environment R&D is something like 1.4 or 5 billion dollars nationally. For example, we're spending almost \$9 billion this year to pay squaw fish bounties in the Columbia River. The equitability between the expenditures in the management arena and the basic research expenditures is way out of whack.

In my national work with the Ecological Society of America and other scientific arenas, we have put two proposals to Congress recently. One is called the Sustainable Biosphere Initiative, and the



other is called the Freshwater Imperative. Both of those documents clearly articulate the research agenda and how to reorganize priorities for the Columbia Basin research in ecology, and I think it speaks directly to both of these recommendations under ESA.

Having said that, I'll return to my prepared statements, and much of what I have to say repeats what others have said, but I want to say it perhaps in a little different way.

I reviewed several recovery programs recently as an independent scientist, and I can say without question at the moment that the recovery of endangered species or populations that are very rare and endangered of being extirpated necessitates two basic things. One is the rehabilitation of damaged landscape units in which these units live to the extent that rare species and, I must say, all the other species that live with them in a particular ecological unit may recolonize those damaged areas. In other words, we want to see natural recolonization if you want to get ahead of this curve. Reestablishment by planting cultured stocks has got to be avoided because we're sending something like two billion smolts out the Columbia River, and you know how many adults are coming back. That strategy is not working, and it costs a lot of money.

The second point is that reconnecting of rehabilitative units must be done with the remaining landscape fragments out there that have bio-diversity. I know you've had Leo Wilson in front of your various committees, and he's very good at articulating the numbers of species that are out there in particular landscape units.

We've simply, under your ecosystem conservation provision, got to mandate we're going to go out and determine where the last remaining refuges or critical habitats are that are connected well enough to ecological structure and function, natural ecological structure and function to allow those units to persist so that they have—so that there can be reservoirs of colonies, both rare species and species that may be declining but are still abundant, to move back into these landscapes that we are going to rehabilitate under Forest Service actions and so forth.

Another very important point I want to address over here is to stress that idea of scientific accountability of agencies in charge of recovery of endangered species. Quantification of ecological processes and responses that are limiting reproduction of endangered species and peer review are the most essential ingredients, and I think the National Scientific Association, the Ecological Society of America being one of the primary ones, are emerging from the ivory tower and are willing to work at a local level to get the scientific information to people like farmers and ranchers and city government folks in a way that can be used through a community process to develop stewardship that's unprecedented in this country.

I hope your reauthorization process will foster that, and I wish you good luck in it.

Senator BAUCUS. Thank you, Jack. I appreciate it.

I've got a question for you, Jim, and that's how you think Black-foot Challenge is working. What I'm trying to get at is: Do you have enough resources among yourselves, without any further legislation or funds or whatnot, to achieve your goals. How well are you working with what you've got, and how well is this going to

work out? Have you got a date by which you hope to accomplish your objective? I'm trying to get a sense of how you're doing.

Mr. STONE. I guess we always need help. I think from a rancher's standpoint, maybe not necessarily just the Challenge, we need to somehow get the people involved, and at this point we need—for that involvement we need it to be very simple, the least amount of regulations as possible. The more government regulations we seem to bring into it, the less and less people are willing to cooperate.

I think as a whole the Challenge, through the work of Chris and Trout Unlimited, we've really got a foothold in the valley. I think we've done enough work with the people that are maybe meaning to work with the government or with government agencies that they become—they start to see work actually being done on the ground.

Senator BAUCUS. Are there present legal impediments or government red tape or regulations that are slowing you down? What's keeping it from going faster?

Mr. STONE. Just getting the word out and making people comfortable with this whole Challenge idea, that agency people can work together and do something productive.

Senator BAUCUS. Do you think you can get the job done?

Mr. STONE. I think we've got great strides. We've got a long ways to go, but it's really encouraging to see this broad spectrum of people actually sit down and discuss major problems with agriculture and mining and timber, and no one is really trying to point a finger at anyone, just point a finger at solutions and working together.

Senator BAUCUS. Would it make any difference in any significant way if there were legislation giving more incentives, that is, where landowners could develop a habitat conservation plan and just get a little more outside assistance or not? Would that get in the way?

Mr. STONE. I guess, speaking for myself, I think down the road that could be a great benefit. At this point it sounds complicated to me for so much—we're so much a grassroots operation at this point in time, if we could keep it as simple as possible, get people on the board and then maybe look at a program like that in the future as something they can look forward to in their management strategies.

Senator BAUCUS. Do you want to comment?

Mr. STANFORD. Yes. I've got 300 acres of land about three miles from here trying to grow grain, but it's awful hot.

A carrot is better than a stick, and I think you should look at the farm bill and other statutes that are upcoming and look four ways to promote stewardship. Again, a carrot is better than a stick, and we've got enough sticks right now that people that are working on the land have to try and deal with.

As I've gotten into this local farming business a bit, it's become apparent to me that there are many programs that interact in ways that provide opportunities for putting good land and water stewardship to work, and what we need to do is find better ways of allowing that to happen. We're constantly polarizing our view of things, and let me assure you that the people working on the land are the ones that are going to have to do the stewardship. We should try to find ways to let them do that. Maybe part of the prob-

lem is that they simply don't know how many programs are actually available.

The Conservation Reserve Program has really worked pretty well, to return to that, and a lot of species are present on landscapes that weren't present before when that program wasn't in place, and it also keeps families on the landscape.

Senator BAUCUS. What specific carrots come to mind in addition to CRP?

Mr. STANFORD. There are many programs for the rehabilitation of wetlands, and you've been through many hearings in the Congress over wetlands. What is a wetland? Not all wetlands are always wet. Many ducks and other species require lands that are only ephemerally wet, wet for a period of time, and those programs in the Soil Conservation Service, the Water Bank and other local interactive programs, for example, around here, Pheasants Forever, are working with local landowners to put those marginal protective lands into good use for, in some cases, rare species.

Many of the rare species that you're going to start hearing about are things we call neotropical migrants, birds, in particular, and one of the things that's limiting them is the availability of riparian corridors, places where they can rest and feed, where there is enough cover along streams to find these resources, and I think one of the things that ought to be built into the ESA Act is the recognition of the very important river corridors that we have in our landscape and with farming communities along those corridors and finding ways to allow animals and plants that we're interested in conserving to exist in those corridors without harming the farming activities to the extent possible.

Senator BAUCUS. I have another question. Assuming the Act is not changed, it's as it is, what's the likelihood that the bull trout is not going to be listed, and what has to be done to prevent listing?

Mr. STANFORD. I'll answer that without hesitation. If the Act stays as it is, the bull trout may or may not be listed, but I think that's irrelevant. There's a high probability the bull trout will disappear because it exists in widely separated populations that are declining at a rapid rate, and they're not in any way connected.

The current bill focuses such extreme time and energy on process that it's going to be very difficult to get ahead of that curve. Your provision to promote ecosystem conservation is a good way to accomplish prevention of that and maybe not even listing a critter, because if we can go out and identify those locations where they're doing fairly well and maintain them, we'll be ahead of the curve, but I think under the current laws it's going to be tough.

Senator BAUCUS. How do you define ecosystem? How large is an ecosystem?

Mr. STANFORD. That depends on the problem.

Senator BAUCUS. Let's take bull trout.

Mr. STANFORD. For bull trout in Flathead Lake that are spawning on the North Fork and Middle Fork, the ecosystem is what we call the Flathead River-Lake ecosystem. It's everything above Kerr Dam. It's a bit difficult to jump over from either direction of Kerr Dam, so the ecosystem in terms of bull trout that are effluvial, migratory to Flathead Lake, is the catchment above Kerr Dam.



For people trying to recover the bull trout on the Flathead Indian Reservation, it has different boundaries, so the ecological question always identifies the ecosystem. What's not always recognized is the ecosystem encompasses many processes that are interactive. You've got to be sure that your management action for a particular species doesn't get in the way of other management objectives at other parts of the ecosystem, and that's what's been missing from the current approach.

Senator BAUCUS. Let's take the Blackfoot. How large is that ecosystem?

Mr. FARLING. Essentially, the whole watershed center. We've got three major tributaries up there that are still in pretty good shape in terms of spawning habitat and producing small fish.

We still have a shot in the Blackfoot for a couple of reasons. We don't apparently have a real big problem yet with exotic fish. We're also doing a lot of things, some of the stuff that Jim talked about regarding restoring some of the habitat that has been kind of beat up a bit to expand it. If I can make a prediction, I think we've got a real serious problem that I don't know if we can correct with the Flathead system outside, of the South Fork. Outside of that, the only watershed we've really got a good shot of protecting a good, viable bull trout population with or without endangered species listing, based on the tools they are using today, is the Blackfoot.

Senator BAUCUS. Wait a minute. So you think the best opportunity is the Blackfoot, first, or the South Fork?

Mr. FARLING. I think, given the tools we have today, Senator, the Blackfoot.

Senator BAUCUS. South Fork second?

Mr. FARLING. South Fork, yes. It depends what we do with the operation of that dam. Maybe there's time. We've got more fish in the South Fork.

Senator BAUCUS. You want to jump in here, Chris?

Mr. HUNTER. Sure. There's a couple other ones I think we have a decent chance with. One is the population that's on the east side of the mountains, which is in the St. Mary's Drainage. We have a pretty good shot there, and there's some hope in the Kootenai, I think, and even in the upper end of the Bitterroot we have some, and in Rock Creek we have some potential.

There is, I think, no question that things have kind of come together in the Blackfoot between the Blackfoot Challenge and relationships that have been developing between the landowners up there and our biologists working up there. It looks like we've made some good strides, but it is too early, I think, to know that for sure.

I want to mention something. Something that Jack said and something that Bruce said both triggered a thought. It's nice to believe that everything that we do for bull trout will be good for everything else in the system, but that isn't necessarily true. Bull trout and Westslope cutthroat, which are also in the Blackfoot and another native fish, is not as healthy as it was at one time. They have different habitat requirements.

If you want to start matching habitats—trying to restore habitat, specially for bull trout, you can have a negative effect on westslopes, for example. So when we're taking these actions, we

have to be cognizant of the effects on the other species in that system.

Senator BAUCUS. How far is the State willing to go to protect the bull trout, like, for example, increasing creel limits or buffer zones?

Mr. HUNTER. Basically you can't fish for them in Montana anymore. You can't harvest them in Montana anymore with two exceptions.

Senator BAUCUS. What about buffer zones?

Mr. HUNTER. Like Bruce said, we're going to find that out in the course of this development of the bull trout restoration plan.

Senator BAUCUS. Jack?

Mr. STANFORD. I just want to throw in one more caveat. We might do everything we can to recover the bull trout. There's one pervasive problem out there that your Act probably ought to be responsive to, and I mention it with respect to the Clean Water Act as well, and that's the introduction of exotic species. We might be able to create the very best ballfield possible for bull trout and have it be compromised by the introduction or continued existence of species that we introduced before that are non-native.

The interaction between non-natives and natives is a critical issue, and it's one that's not clear-cut. It's not easily understood. It's a problem in the Colorado River for those species down there that were charter members of the Endangered Species Act that still haven't recovered. They're not recovering because all their young are eaten up by exotic species that were introduced, and I think the same analogies might be applied to certain weeds we have in this country for the terrestrial environment.

So I would really like to see some kind of legislation that, again, emphasizes the need for really careful control of exotic species and elimination of them wherever we can.

Senator BAUCUS. What does Congress do, say, Thou shalt not introduce exotic species?

Mr. STANFORD. What you just said.

Senator BAUCUS. Is that better left to the agencies, developing their recovery plans? I get pretty nervous when I hear people say that Congress should tell people how to manage.

Mr. STANFORD. I agree with that, but the effects of critters coming into this country are far reaching. If we get zebra mussel in the Flathead, we are going to reduce the—it's already practically destroying the Upper Mississippi, and I think government has to be active in that regard. I think that one of the things you might keep in mind as the hearing goes along on the ESA—there's always that caveat in any recovery program that encompasses non-native fishes, and it's pervasive and has to be done.

Senator BAUCUS. How did the zebra mussel get over here?

Mr. STANFORD. On the prop of a boat that wasn't properly cleaned. It could come in in some kind of a container that's carrying bait fish, or it could come in—the thing is really residual. It could almost come in a drop of water if the larvae in that drop of water contained any transportation mechanism.

This is a pervasive problem. We just discovered neomysis in John Day pool, and there was a lot of discussion about drawing down John Day pool in the last panel. The presence of neomysis at John Day pool is likely from transporting fish upstream from the Coast

because they're estuarian in their origin, but it's going to make it tough on smolts that are trying to get through John Day pool.

It's not one that you can put an easy thumb on. They find their ways in pervasive ways, and one of the ways we want to prevent them from coming in is through some sort of pro-active introduction. I think there needs to be some statutes that do more than slap people's hands when yellow perch are introduced in Lake Mary Ronan.

Senator BAUCUS. Jack, could you jot down some ideas along those lines, how to prevent introduction?

Mr. STANFORD. Some of that you'll find in the Freshwater Imperative document I've given you.

Senator BAUCUS. Thank you all for coming.

Next, we have a panel of people that represent different groups and some represent themselves.

We have two of these panels, each composed of five people.

First is Hank Fischer, Defenders of Wildlife; Elaine Allestad, Montana Woolgrowers; Herb Johnson, Flathead Wildlife Club; Hertha Lund, Montana Farm Bureau; and Louisa Willcox, Greater Yellowstone Coalition. They'll be followed by a second panel of Peggy Wagner, Montanans for Multiple Use; Janet Ellis, Montana Audubon Council; Keith Olson, Montana Logging Association; Brian Kahn, Nature Conservancy; and Gary Langley, Montana Mining Association.

Keep in mind, each of you, if you have not already been informed, I'd like you to keep your comments to three minutes, and then I'll ask questions.

I'd like each of you, to the degree you are so inclined, to also try to put yourself in the shoes of the person that tends to represent the other side and kind of look at the world from their point of view too. My goal here is to, as much as possible, encourage us to resolve some of these problems, and I think the best way to resolve them is to try to see the problem from the other person's point of view. If nothing else, we'll learn something. That won't hurt.

Hank, why don't you begin?

#### STATEMENT OF HANK FISCHER, DEFENDERS OF WILDLIFE

Mr. FISCHER. Thanks, Senator Baucus.

What I want to do is—when people talk about the Endangered Species Act, I find too often they talk about faraway places and situations where we don't know the context, and what I thought I would do here today is to talk about the Endangered Species Act here in Montana, how it has affected Montana.

First of all, Montana only has 10 endangered species. That's among the lowest in the country, and it's significant given that we are the fourth largest State in the country. By contrast, California has 97; Texas, 59; Florida, 78. What I think may be the single most important Montana Endangered Species Act fact is this, that Montana has approximately 60 species that are candidates for listing under the Endangered Species Act.

So why is it so important? Well, more than anything it makes plain that our real challenge with endangered species in Montana isn't with listed species but with species that may be listed if we don't take steps to conserve them now, and I've mentioned that the



Endangered Species Act places no constraints on the State of Montana's ability to protect species. In fact, Senator Baucus, your bill, I think, takes some important steps toward making it easier for the States to qualify for funding to work on candidate species, which is a real important advance.

What I thought I would do is, I think I'll condense this. I have a list—I'll submit it for the record—of Montana's 10 endangered species, and I've summarized the advances that have been made for these species over the last decade, how much that cost and what the impacts have been on local economies, and I think that what you'll find by looking at this is that we are making real progress on endangered species recovery with Montana's 10 endangered species list. It's very much success stories for almost all these species.

The costs have been minimal. The only species where there's any significant economic costs have been with grizzly bear management.

I also want to talk specifically about the Endangered Species Act in Montana from the standpoint of the consultation process. Since 1980, the Fish and Wildlife Service has done approximately 12,500 consultations in Montana. In only 17 cases the Service found a situation where the project would jeopardize a listed species. In each of those cases the Service has found reasonable and prudent alternatives that would allow the projects to proceed. In fact, that has happened most of the time. So the real strength in the Endangered Species Act is not in stopping development but in modifying and making it compatible, and that's exactly the way the Endangered Species Act works here in Montana 99 percent of the time.

Finally, let's look at the cost of the endangered species in Montana. During 1993, the Fish and Wildlife Service spent \$1,250,000, the State of Montana spent \$335,000. That's less than the cost of upgrading two miles of Montana highway, about the same amount the Federal Government loses on the low cost timber sales in the Beaverhead Forest and about the amount Montanans spend on Little Caesar's pizza a year.

In summary, compared to most States, Montana has a very modest endangered species problem. We have few listed species. We're making solid progress toward recovery of the ones we have, and economic impacts have been minimal. Most importantly, if we take action now, we can prevent the necessity for future listings and make the Endangered Species Act debate a non-issue for Montanans. We can sit around and argue about how bad things are, or we can take responsibility and determine our own future.

Thank you.

Senator BAUCUS. Thank you.

Elaine, you're next.

#### STATEMENT OF ELAINE ALLESTAD, MONTANA WOOLGROWERS ASSOCIATION

Ms. ALLESTAD. For the record, I am Elaine Allestad. I'm a sheep producer from Big Timber, Montana, and I am representing the Montana Woolgrowers Association, an organization of 2,600 sheep producers, all of whom raise sheep in Montana. I am a member of the Fish, Wildlife and Parks Commission, and I am also a County Commissioner from Sweetgrass County. My husband and I run

1500 ewes, and we are one of two producers who graze sheep in the wilderness areas of Montana. I appreciate the opportunity to tell the committee about the problems presented by the Endangered Species Act. It is in definite need of amending.

I am also going to try to straighten up your question about whether that permittee could carry a gun or not. I gave you the information. I gave it to your aide, the Forest Service's orders. I'll read that into the record.

The Rocky Mountain wolf is making a comeback in some parts of Montana. The possibility alone, not the actual presence, of a wolf occupying a grazing allotment sets into action strict regulatory controls of the permittee. Ira Perkins of Bynum, Montana has been grazing his sheep for 42 years on an allotment known as Little Badger. This year his permit States that if wolves or grizzly bears occupy the allotment and cause any problems on his sheep, Mr. Perkins must move off the property immediately.

Furthermore, Mr. Perkins has been forced into accepting a permit stipulation requiring that neither he nor his herders be allowed to carry a rifle nor perform any predator control, including the shooting of coyotes. They can only carry a shotgun to be used in self-defense should a grizzly bear attack them. The Forest Service placed language in the permit saying that the prohibition of any predator control was to insure that a grizzly bear was not mistakenly shot for a black bear, nor a wolf shot mistakenly for a coyote. My point is: If you can't protect your flock from predators, how can you possibly graze sheep? The answer is simply, you cannot.

Dick Christy of Fairfield, Montana was also a victim of the Endangered Species Act. Mr. Christy, while grazing sheep on the Blackfeet Indian Reservation at their request, had his flock attacked by bears. He shot one of the bears, and it turned out that it was a grizzly bear. He followed the proper regulations in reporting the bear's death to legal authorities and, despite the fact the grizzly had been killing sheep and was in the act of running into Christy's flock of sheep when he was shot, Mr. Christy was charged with illegally killing a grizzly bear. Mr. Christy appealed his case all the way to the United States Supreme Court, contending that he was being denied his rights to protect his property. The Court, which chooses its cases, chose not to hear Mr. Christy's plea of his rights being violated.

The recovery plan for wolves extends throughout Western Montana, from the north side of Interstate Highway 15 to the southern side of Great Falls to the Montana-North Dakota border. It is evident that the wolf's return is going to spell trouble for private property holders in our State. We have precedent to fear.

The desert tortoise of California was listed as threatened due to the insistence of environmental organizations. Survey estimates show there are 2.5 million tortoises in the wild and another 100,000 in captivity. California sheep producers were forced from grazing allotments due to the listing of the tortoise as endangered despite no scientific evidence existing which proves that grazing hurts the tortoise or its range.

Some 110,000 domestic sheep were removed from public land grazing. In Oregon the Forest Service has just recently removed domestic sheep from a long-time grazing allotment due to the Big-

horn sheep occupying the same area. Although the Bighorn is not an endangered species, it is a classic example of what steps environmental anti-grazers are taking.

In Northern Minnesota, where there are now hundreds of wolves, sheep production has fallen 82 percent, according to the Minnesota Sheepgrowers Association. They say that the rules and regulations of Endangered Species' status of wolves, including the limiting of other predator control, have allowed wolf predation to force producers to sell out. At one time 91,000 domestic sheep grazed those very parts of Minnesota now forced to dramatically reduce those numbers. Now there remain merely 16,000 head.

The Endangered Species Act is being used by the foes of western ranching interests to take private property rights and halt economic activity. As a commissioner from a county in Montana that has very little industrial industry other than ranching, and as a lifetime citizen of Montana, I am greatly disturbed by Federal laws which seek to limit economic growth and attempt outright to stop natural resource development and use. The American sheep industry has given the United States Senate, including Chairman Baucus, a list of specific changes to the Act deemed necessary to the survival of agricultural communities as a whole. I urge movement on those amendments.

Senator BAUCUS. Thank you. Thank you, Elaine, very much. Herb?

#### STATEMENT OF HERB JOHNSON, MONTANA WILDLIFE FEDERATION

Mr. JOHNSON. Mr. Chairman and members of the committee, my name is Herbert Johnson. I am an outdoorsman from Kalispell, Montana. I am here today to represent the Montana Wildlife Federation.

As an outdoorsman, I and the rest of the men and women of the outdoors value the birds, animals and fish, both game and non-game species, very highly. To lose a species is to leave a gap in the outdoor experience. Sportsmen have in the past and will in the future willingly provide dollars for the benefit of wildlife, both game and non-game species. Sportsmen, generally, will support action that is based on sound biological principles.

Our wildlife, whether they be predator, prey or just filling a niche in the ecosystem, face many threats to their continuing existence. They face threats from the tremendous increase in human population and the resultant mismanagement or abuse of resources and ecosystems. They face threats from habitat destruction due to pollution, neglect or competition for space, and they face threats from loss of proper management due to pressures from misinformed and misguided organizations.

We can cite any number of examples of species that have rebounded from near extinction through the combined efforts of Federal agencies, State agencies, private organizations and concerned citizens. It is inconceivable that we would consider weakening or eliminating the very Act that has facilitated this cooperation and resultant successes. It is inconceivable now, when we are on the brink of success with species such as the bald eagle, the grey wolf,



the blackfooted ferret, and the whooping crane. It is inconceivable now, at a time when we have many more species in serious trouble.

Right now in Western Montana we have bull trout that qualify for a listing, Kootenai River sturgeon that have been petitioned for listing and redband rainbow and Westslope cutthroat that will likely soon be petitioned for listing. In the immediate area, the Pacific salmon and steelhead stocks are in danger. Some are already extinct. Others may be past the point of no return. The economic impact to the Washington-Oregon Coast is staggering, just as the loss of a species like the grizzly bear or the cutthroat trout would be to Montana.

Mr. Chairman, the Montana Wildlife Federation does strongly support the reauthorization legislation as introduced by yourself and Senator Chafee. Montana and the rest of the United States or the world, for that matter, would be a poorer place without the diversity of plant and animal life we all so richly enjoy.

Thank you.

Senator BAUCUS. Thank you, Herb, very much.

Hertha, you're next.

#### STATEMENT OF HERTHA LUND, MONTANA FARM BUREAU FEDERATION

Ms. LUND. Good morning. My name is Hertha Lund, and I am here today to represent the Montana Farm Bureau Federation, which has more than 6,000 members. In my job for Farm Bureau, I have the opportunity to talk to many of our members from across the State. I'll try to bring some of that into my testimony today, and I included it in the written testimony so you can have an idea of what their concerns are.

I will be sharing those stories and also provide recommendations of the Montana Farm Bureau Federation on how to improve the ESA to provide positive incentives to protect endangered species. Overcoming the current perverse incentives of the ESA would provide a remedy for the current shoot, shovel and shut up syndrome that plagues endangered species once they are listed as becoming a menace to landowners.

Your bill does not go far enough, Senator Baucus. You have stated that you feel you have found common ground and created incentives. However, the fact remains that your rhetoric is better than your bill. Farm Bureau cannot support your bill at this point because it simply does not address our members' concerns. We hope to be able to give you some ideas today that will help improve the bill.

One rancher told me that there's really no reason to be involved with the blankety thing, and this is Bob Hanson who ranches near White Sulphur Springs. His family has been ranching in that area since 1881. He explained that your current legislation and the current law provides no incentive and takes away property rights.

He said, "So it is detrimental to find an endangered species on our property. The ESA is totally negative to a landowner. The Act takes away without justification or compensation." Bob is just one of many Montana ranchers and farmers who are gravely concerned with current ramifications of the ESA.

Your ecosystem approach will only extend problems for private landowners. It seems to be a way to increase central land use planning from Washington, D.C., while at the same time decreasing government accountability. Under ecosystem management there are no measurable goals, nor are there any boundaries. Such a system would create what most farmers and ranchers consider a smothering blanket of government control.

Many of the members are also very distrustful of the ESA, and that's because of wolf reintroduction and other experiences with elected and appointed government officials. We fear hidden agendas and misuse of the law.

Farm Bureau believes that an appropriate balance between the needs of a species and the needs of people can be struck. No one wants to see species become extinct. Yet, at the same time, no one wants to see people lose the capacity to produce food or to be without essential human services. Any such balance, however, should include proper respect for property rights.

The whole Act has gone amuck and needs fixing. It is certainly a case of good intentions gone awry. It is currently bad for people and for endangered species.

In addition, the Act is expensive. The National Wilderness Institute estimates that the identifiable cost of the first 306 written recovery plans will exceed \$884 million if the plans are executed as written by the Fish and Wildlife Service. This figure ignores the cost of recovery plans for the 589 currently listed species that do not yet have written plans. Farm Bureau members would like to see a total accounting of how much money has been spent on endangered species.

The problems can be remedied. We ask you, Senator Baucus, to craft a statute that will promote recovery of truly endangered or threatened species while at the same time not destroy the social and economic fabric of Montana and other affected areas.

Here's a list we'll give you that we think will help the Endangered Species Act. Provide positive incentives to enhance recovery of listed species. Critical habitat should be designated at the time of listing of a species. The Act should at least require minimum scientific standards necessary to support listing. Delete application of the Endangered Species Act to subspecies and distinct populations.

The definition of "take" under Section 9 should be clarified to not include modification of potential habitat. The Act should provide strict liability for damages caused to person and property from listed species. The Act should be amended to require a species management plan that considers socioeconomic impacts.

The private property rights should be enacted as part of reauthorization. The exemption process needs to be changed. It's unworkable and generally inaccessible.

In conclusion, the Farm Bureau believes that the current ESA is a primary example of good intentions run amuck. The Act is expensive and not effective, and it creates perverse incentives.

It would be better for the ESA and Montanans if Congress would provide protection for property rights and work with farmers and ranchers to provide positive incentives to provide endangered species habitat. Your current bill does not yet find the common ground on the ESA. We look forward to working with you to modify the

bill so that the bill is not tipped toward the powers that be, and we consider the powers that be inside the beltway, the environmental lobby industry.

Farm Bureau thanks you again for this opportunity to speak for our members. Please remember our concerns when you return to D.C.

Thank you.

Senator BAUCUS. Thank you, Hertha.

Louisa?

### STATEMENT OF LOUISA WILLCOX, GREATER YELLOWSTONE COALITION

Ms. WILLCOX. Good afternoon, Senator Baucus. My name is Louisa Willcox, and I serve as program director of the Greater Yellowstone Coalition based in Bozeman, Montana. I am here today on behalf of the Wild Forever, a collaborative project to conserve and restore the grizzly bear in the lower 48 States, which also includes as members the Wilderness Society, the Sierra Club, the Sierra Club Legal Defense Fund, the National Audubon Society and the Greater Yellowstone Coalition. Many of those groups are represented here today, and I'd like to acknowledge them.

First, I would like to thank you for your leadership and commitment to one of America's truly far-reaching conservation laws, the Endangered Species Act. Without the safeguards of the Endangered Species Act, we might be here today to mourn the loss of the grizzly bear in Montana. We support your efforts reauthorize the Endangered Species Act, and we have a few suggestions which we would like to make today, and we appreciate you coming here and listening to all of us and for your endurance on this hot day.

I'd like to respond, first, to and reinforce one of your comments that you made earlier this morning on the need for a more ecosystem-based approach to endangered species protection and the need for scientific clarification in the listing and delisting process. I'll focus my remarks on the grizzly bear, but, of course, many of these issues run parallel with a variety of other endangered species.

The first thing I'd like to say is, the grizzly bear truly is a barometer of the health of the ecosystems of the Northern Rockies. Reduced to about 1 percent of its former numbers, the grizzly still calls Montana home, which indicates the ecosystems of the Northern Rockies are still in relatively okay shape. Secondly, protecting the future of the grizzly bear, which is synonymous with, as I just said, the protection of ecosystems, protecting these ecosystems, or, in fact, the underpinnings and the basis for the regional economy which is here today and which is growing in some parts of the State and of this region.

I'd like to supplement the record today with a report on an economic profile of the counties of Greater Yellowstone, which we've recently devised, which depicts an economy which is rapidly growing in jobs and income because of the many amenities that are here, the rich and diverse wildlife and other amenities. We figure the Yellowstone part of the State would make the State the fastest growing State in the Nation, and that's because of the rich wildlife heritage we have. The growth that's occurring is not in the face of



obstacles represented by the grizzly bear but because of the wildlife and scenic beauty of these regions, and the grizzly bear is very much a part of the ecosystems, and ecosystems, of course, are what communities depend upon.

All is not well with the world of grizzly bears, we heard this morning, but the problems are not insurmountable, and I want to focus on one of those, and the problem is, as Dr. Craighead identified, habitat degradation.

I gave the person earlier a set of maps which maybe you should take a look at because they depict the level of road building and forest logging that's occurred on public lands and national forest lands since the population of grizzlies was listed as threatened in 1975. This roading and harvest was responsible for the virtual extinction of grizzly bears in the Targhee National Forest west of Yellowstone Park where thousands of miles of road were built, and the grizzly bear habitat in Northwest Montana was particularly heavy hit with about 850,000 acres of land roaded and logged in the grizzly bear habitat since the population was listed.

The problems, however, do have solutions. The problems are caused by excessive roads in many cases, loss of security, and those problems have been well documented by cooperative Federal-State research projects, one not very far from here in the case of the South Fork Study. The problem is not one of cooperation. The problem is not one of cooperation between the State and Federal agencies. The problem is one of implementing what the scientific recommendations are indicating, which is the need for an access management plan that makes sense and the need for maintaining a secure habitat for these populations.

We can live with bears, and loggers can live with bears. I've worked with loggers the last year and a half, with a task force of loggers in Eastern Idaho, and the problem is not loggers versus bears. The problem is access management. The problem is maintaining security for those grizzly bears. I'd be happy to illuminate my experience in more detail later. It's a promising effort, but the Forest Service and the Federal agencies have got to make a commitment to addressing these serious questions.

I have a list of improving amendments that are tacked on at the end of that. The one I think I will isolate, because I know I am running over, is the need for objective—for objective scientific criteria in the listing and delisting process, and I'm sure you have seen the Science Magazine article written by professors at the University of Idaho that demonstrates, in our view, all the recovery plans that have developed and developed to date and that the population goals in the existing recovery plans fall far short of what is necessary. In the case of the grizzly bear, we estimate that double the numbers with that.

The population goals fall far short of what is scientifically justified, what is necessary for their recovery and, in fact, are a lot like the population levels at the time of listing. That is a serious problem but one that I think scientific scrutiny and strengthening of scientific criteria at the listing time to have specific delisting criteria and definitions for what we are going to call recovery—we can solve this problem, and I think that your—the lines along what you're moving in terms of additional scientific scrutiny at the time

of listing to make sure we have a well justified definition of recovery, that would help a great deal.

I could go on, but I realize I ran out of time. I appreciate the opportunity to be here today.

Senator BAUCUS. Thank you, Louisa, very much.

Hank, I'd like you and Louisa to put yourselves in the shoes of Elaine and Hertha for a moment. Elaine talked about the losses that sheep producers face, particularly with bear, wolf, and coyote. That's their livelihood, those losses are real. They're not just something you write down on paper and add up the dollars and cents, they're real, and we have a very direct effect on those operations.

So, when you put yourself in Elaine's shoes down around Big Timber—they've got a ranch down there, and they're trying to raise sheep in the wilderness area, and they're doing a good job and being good stewards of the land, but bear destroy your sheep. What do you do? Currently you can't do anything about it.

Mr. FISCHER. I'd like to think that's exactly the kind of steps we've taken is to try to put ourselves in their shoes, because what I think is, to the extent we solve their problems, we take care of the endangered species problems at the same time.

Senator BAUCUS. What do you say—

Mr. FISCHER. What I say is, I look at three things with bears and wolves. First of all, bears and wolves don't kill livestock very often, so that narrows down the problem quite a bit. In Montana we have a relatively small number of producers who are affected by this. For those people it's a problem.

Senator BAUCUS. They are people, though. What do you do?

Mr. FISCHER. Second, when they have losses, we support the control of those animals, and the Endangered Species Act permits the control of those animals for bears and wolves in any instance where we have a depredation of livestock, and those depredations are addressed, and the animals are either removed or, if it's a repeated offense, they are killed. Finally, there are cases, then, where we don't get to that, and, for instance, in our situation, we developed a program where we compensate livestock producers at market value for their losses.

I think that goes a long way toward addressing their concerns. I recognize they need control, and it has to be prompt. We try to indemnify them for their losses. I'm not sure what more we can be doing than that.

Senator BAUCUS. What do you say, Louisa?

Ms. WILLCOX. I have two responses. In some cases there's not much you can do. Things are going to happen when there's grizzly bears, and that's the way it is in these wildland ecosystems that we live in. However, in the portion of the Greater Yellowstone, there's been a very concerted and, I think, very positive effort on the part of the Forest Service to voluntarily work with permittees to exchange the allotments out of areas that are high conflict prone places where grizzly bears are likely to get them, and that's worked pretty well in Targhee, which has gone down from 20,000 sheep to none in Situation Only habitat with reasonably little ill effect among the permittees that want to stay in the business. I think if you go down there and talk to some of these sheep people, it was a trying time, but they got through it. That's a situation where

they were able to work out some solutions to some conflicts that had been, indeed, occurring.

Secondly, I think that there are opportunities to minimize the losses. I'll point to an example that we've been involved in heavily over the recent months, and that is on the Bridger-Teton Forest in Wyoming. Here is an example again of where lack of leadership in Federal agencies has made it very difficult, but we approached the permittee in a situation where they were losing livestock, in this case cows, to grizzly bears and have been trying to work out—to understand what the dynamic of what was going on in the allotment was—and there's a lot of information on that—and what the options were. We think we've got some good ideas, but we need the Federal agencies to play a role in that.

In response to your question, we have to take it on a case-by-case basis, but in that case I think there's some solutions out there. We're willing to come to the table, as we have in this case and as I have over the last year with these loggers, to work out the details of what grizzly bear recovery is really going to mean and how to minimize the kinds of problems that are involved.

Senator BAUCUS. I hear that. If you're a sheep rancher and you also run some cattle and you've got an allotment. Say it's private land. It doesn't have to be government land. Let's say a bear or maybe a wolf comes and starts killing your livestock. Currently, under the law, because both the wolf and grizzly bear are endangered, you can't protect your livestock. You can't shoot the bear, you can't shoot the wolf. What you can do is begin a process where you work with agencies, Montana Fish, Wildlife and Parks, Fish and Wildlife Service, et cetera. It's pretty complicated. It's pretty time consuming. It's pretty frustrating if you're sitting there and you've just got to watch the bear and wolf keep killing your livestock. You can't do anything about it. It takes a long time for somebody to do anything about it, and you don't get compensated anyway, as it is now.

Don't you think they've got a concern?

Mr. FISCHER. Absolutely. I think the point you make is probably the most difficult point there is to address, although what I submit is that the Endangered Species Act does offer the flexibility to deal with that problem with reintroduced populations. For instance, with reintroduction of wolves in Yellowstone and Central Idaho, livestock producers will have the ability to kill a wolf that is in the act of killing their livestock. I mean, that situation will be addressed.

Senator BAUCUS. I'd like to ask Elaine and Hertha a couple of questions. One thing I've learned in life is never to assume anything. I'll ask you if you agree. You are not in favor of letting the bear or wolf become extinct, are you?

Ms. ALLESTAD. Certainly not.

Senator BAUCUS. Are you?

Ms. LUND. We're certainly not.

Senator BAUCUS. Okay. If everybody at the table here is trying to figure out a way not to let the wolf and bear become extinct, the next question is: How do we accomplish that objective? You, Elaine, just now heard Hank say the introduction of candidate species. Under current law there's a way to try to solve the problem. I know



the stockgrowers are split on that. I know the environmental community is split on this.

My personal view is that it's a good handle to help solve this problem. There are many handles. This is one. Namely, introduction of a candidate, nonessential species enables two things to happen. One, you get the populations back so the species can be delisted and then a lot more opportunities for the private landowner, and, second, under the law, if there's introduction, as you well know, if a wolf or a bear is killing your sheep, you can shoot the bear or wolf right there. Under the law you can do that to protect your herd.

Now, my question is: Is that a part of the law you think is helpful or not, as we altogether try to find a way to not let the wolf or the bear become extinct?

Ms. LUND. Your question is about the reintroduction program?

Senator BAUCUS. I'm asking about the candidate species as one way to solve this problem, but I'm going to ask what other ideas you have to better enable us to save the wolf and bear from extinction.

Ms. LUND. It's our position that we should actually delete the application of the Endangered Species Act to subspecies and distinct population. In Farm Bureau's mind we feel the wolf is a distinct population. It's not endangered in Canada and Minnesota.

Senator BAUCUS. That's right.

Ms. LUND. Yes. I guess we wouldn't go for the introduction, but if the bear is here, the bear is here.

Senator BAUCUS. You don't want the bear to become extinct?

Ms. LUND. No, we don't.

Senator BAUCUS. Regardless of whether it's subspecies or not?

Ms. LUND. That's true, but that's not what introducing our distinct population has to deal with. That's not addressing extinction. It's extending it beyond the goals of the original Endangered Species Act.

Senator BAUCUS. The next question is: What ideas do you have to prevent bear and wolf becoming extinct? How do you do this? I'm asking you from your perspective, how we do it.

Ms. LUND. Well, I think that here in Montana, from what I understand of grizzly bear—I've heard different testimony today and, actually, from what I heard from some of the people, it has recovered, and I think we also need to look at—I did jot down a list in the back here.

We need a shift in how we address some of these issues, and we actually may look into more of a market approach and explore that and kind of study it. Maybe provide ESA easements where people pay for providing habitat, preservation bounties, allow individuals to defend their rights on Federal land, the non-profit organizations, use of some of their money to provide habitat through acquisition instead of a lot of the stuff that happens now as far as D.C. It wouldn't be so much controversy if there was actually more habitat bought.

Senator BAUCUS. That's what we're trying to do and part of the approach I'm taking here, to help landowners so they are not put upon by agencies that are trying to help prevent these species from becoming extinct.

Ms. LUND. I think we need to look creatively to find more habitat acquisitions, because the Supreme Court in the recent case of *Dolan* stated that the primary concern of those who are up in arms about the Fifth Amendment is that they don't want to be the minority that bears the public cost of providing what the public has chosen to be their benefits, and so I think we need to look at that and to provide compensation and incentives, which I think we're starting to get into that. At least people are at the table talking about it, but I think we've got to go much further, instead of just commanding control. If you do it through habitat acquisition, you get out of a lot of these problems.

Senator BAUCUS. I've got to chuckle a little bit and tell you a personal story. Preparing to come back home for the hearing, we were trying to catch planes to come home, and the weather was terrible. Finally, we were able to get a plane which arrived an hour and a half late into Salt Lake. On the plane, I was reviewing the testimony for the hearing today, your testimony as well as that of others, and I got a hunch you were going to make a statement about Fifth Amendment takings and so forth.

Just purely out of coincidence, two things happened. I was going through and lo and behold, coincidentally, I saw an article written by you in the *Journal of Commerce*. Coincidence. It was about that issue. It was the *Dolan* case, which you mentioned, and the degree to which the Fifth Amendment might apply to the Endangered Species Act and require compensation of landowners and so forth. That's an interesting subject.

Then another wild coincidence occurred. I landed in Salt Lake, an hour and a half late and missed my connection. How in the world am I going to get home for this hearing? There's no more planes from Salt Lake to get home in time. Well, I had to charter a plane. Middle of the night, got to Missoula, 1:00 last night.

I happened to see a friend of mine in the Salt Lake airport. He was trying to get home too. All the flights were canceled, and I said, Want to ride to Missoula?

He said, Sure, and he said, I've got a buddy of mine. Is it okay if he comes along too?

Sure, because there was space on the plane.

His buddy's name is Brian Morris. Brian Morris is from Butte, Montana. Last year, Brian Morris clerked for Chief Justice Rehnquist. Brian Morris wrote the *Dolan* decision, and so I asked him about that, What does *Dolan* apply to? Does it apply to the Endangered Species Act? So I got a big Constitutional law dissertation from Brian on *Dolan*.

The long and short of it is, it was his view that the *Dolan* case is special circumstances, would not apply, generally, to the Endangered Species Act recovery plans.

Anyway, that was quite a coincidence. Hertha, you're saying that ranchers don't think this bill does anything. I appreciate that, but you heard John Bloomquist, who is the attorney for the Montana Stockgrowers—he felt it does do something, and he mentioned the scientific peer review provision as well as the consultation provisions and consultation of State government and also adding in, minimizing adverse economic and social effects, that all of that does help, and my intent here is for that to help to alleviate a lot

of, and I think most of, the concerns that property owners have in the State. I do think that they will go a long way, and I just hope that the Farm Bureau is going to work with us to help make those work.

Ms. LUND. I think you said it was a step in the right direction. I also said that the talk is good, but I don't think the bill goes far enough.

Senator BAUCUS. I encourage both of us to keep working.

Ms. WILLCOX. I have one final thing I want to say in terms of your interest in addressing this question about how to address the concerns of some of the livestock industry relative to some of these issues we've been talking about here today. I just want to say, in the case of grizzly bears, getting to recovery the fastest way possible is the easiest way, getting to a situation where true recovery is achieved.

Dr. Craighead said in his statement that you have to have an area large enough to provide viable populations, and it needs to have specific standards and specific security areas and specific access management plans to make that real, but it's really possible. Scientific information shows the direction it needs to go.

We have an alternative recovery plan that we wrote using some of the best information we could find, and I think the fastest way to recovery is the way to alleviate the pressure on the livestock industry and others. If we get to recovery, a lot of these things are less difficult.

Senator BAUCUS. That's my view too.

Elaine, isn't that right? The faster we recover these bear and wolf, the less they are going to be a conflict; isn't that right? Seems to me that's the case.

Ms. ALLESTAD. Right. What Louisa was saying about renewing—you know, finding other areas for sheep producers to go, I don't know that—

Senator BAUCUS. I'm not wild about that.

Ms. ALLESTAD. I'm not either. I was just going to say that I know Teddy Thompson would probably go kicking and screaming. It's been in the family for generations where we've raised sheep.

We have gotten along with grizzly bears. I think Teddy has had some documented problems, but we have never had documented grizzly bear loss. I don't know whether it's the way we do business or a little bit of luck too, but we use our dogs. We use everything possible to comply with regulations.

The problem is the regulations keep getting tougher and tougher and tougher to comply with. The regulation was put on us that we could not go on it before the 15th of July, which is an arbitrary date. It wasn't range readiness or any scientific reason. It was just September 15 because the Divide would be dry. Well, sometimes you go over the September 15th, and maybe, if there was a rainstorm the night before, there was more damage than if you went over snow. It should be done on scientific reasoning, and removing livestock isn't always the answer.

Also, we talk about the wolf recovery, and in there it states that, yes, if the wolf is killing on private land that the landowner can protect his livestock, but not on Federal land. So that wouldn't address our situation.



Senator BAUCUS. Is that true? Hank, do you know the answer to that question.

Mr. FISCHER. The way it reads is, on public lands, no, the landowner cannot shoot wolves right at the beginning. If they have a problem that can't be addressed, then we can issue a permit to shoot wolves.

Senator BAUCUS. Can the introduction of candidate species—

Mr. FISCHER. This is experimental populations.

Senator BAUCUS. That's what I mean. Experimental populations, then, what can the operator do, and what can't he do?

Mr. FISCHER. If the operator has repeated livestock problems that can't be addressed by animal damage control, then they can be issued a permit to kill the wolves.

Senator BAUCUS. What about private land?

Mr. FISCHER. On private land they can shoot wolves if they're killing the livestock.

Senator BAUCUS. I guess, as Elaine says, it helps on private, but not on public.

Is that what you're saying, Elaine?

Ms. ALLESTAD. That's what I'm saying.

Mr. FISCHER. It is a more difficult process on public land.

Senator BAUCUS. What if the same provision would apply to public as applied to private? After all, it's the same bear.

Mr. FISCHER. I think their differentiating between—the public land is serving more multi-values is all, and they're trying to balance these.

Senator BAUCUS. Would it be upsetting, with the experimental populations, if the same provision would apply to private and public land? Would that cause you heartburn if the law were changed?

Mr. FISCHER. Yes. It was a point that—it was just a point of negotiation. We went through a lot of discussions with livestock producers.

Senator BAUCUS. As a consequence, what if you got the support of the stockgrowers to develop other conservation plans? This is a combination here.

Mr. FISCHER. I understand that.

Senator BAUCUS. I don't know if the Farm Bureau and the stockgrowers would agree to it. It's just a thought.

I urge all of you to explore that and think about it. That might be an opening.

Ms. WILLCOX. One of the things we're proposing in our list of amendments was the incidental taking permits not being granted unless they're on balance, demonstrated to be of overall benefit to the recovery of a population, but that might be something that could apply to certain types of situations.

Senator BAUCUS. As usual, we're behind. Thank you very much for your help. Thank you.

We're down to our final panel, Peggy Wagner, Montanans for Multiple Use; Janet Ellis, Montana Audubon Council; Keith Olson, Montana Logging Association; Brian Kahn, Nature Conservancy; Gary Langley, Montana Mining Association.

Three minutes each. I'll start with Brian.

## STATEMENT OF BRIAN KAHN, NATURE CONSERVANCY

Mr. KAHN. Good afternoon. My name is Brian Kahn, State director of the Montana Nature Conservancy. We're a private, non-profit conservation organization with 4700 members in Montana. Our mission is to conserve key habitat for Montana native wild species for the benefit of our children and grandchildren.

We believe strongly that the key to conservation in Montana is finding common ground between the need of people to earn a living and the habitat needs of wildlife. Because we believe that, we work through cooperative partnerships with private landowners, timber companies, ranchers, public conservation agencies. In the 16 years we've been working in Montana, we've assured long-term conservation management for dozens of miles of Montana rivers and over 350,000 acres of habitat for elk, bighorn sheep, grizzly bears, bald eagles and other bear species. More than 250,000 of these acres were and remain in livestock or timber production, illustrating that common ground can, in fact, be found between the needs of the environment and the needs of the economy.

It's our experience in conserving grizzly bear habitat on the East Front near Choteau that the Endangered Species Act was a positive factor in developing that common ground. In the late 1970s we identified a large marsh around the Pine Butte as top quality bear habitat heavily used by bears and cubs in the spring after hibernation. To assure that habitat would always be available for bears, we bought it. Willing buyer, willing seller. We bought 13,000 acres from several ranchers.

Like other Montana ranchers, we pay taxes, fight weeds, fix fences and have to pay the bills, so we continue to hay and graze that land through lease agreements with our ranching neighbors. Last year we put up 769 tons of hay and grazed over 1480 lands. Our ag income was \$20,000, not including income to our lessees. Also, we operate a guest ranch there, and people come from across the United States to learn about our conservation efforts and the fact that you can run cattle and have grizzlies in the same area. Overall, we contribute well over \$300,000 annually into the local economy in salaries and purchases of supplies. In addition, we own the Egg Mountain Dinosaur Site which brings in tens of thousands of tourist dollars into the community.

When we first arrived there, we were regarded with intense scrutiny by many of our neighbors, welcomed by a few neighbors, like Montana's best known writer, Bud Guthrie. The predation of livestock was a major concern of ranchers leading to grizzlies getting Triple S treatment, shoot, shovel and shut up. The ESA put the force of Federal law against that activity, giving folks and incentive to try to find other solutions.

One of the best that worked for a lot of sheep ranchers, including Ira Perkins, whose name was mentioned earlier, was to buy specially trained bear dogs. Beehive operators changed some of their practices, and we worked cooperatively with ranchers and the Fish and Wildlife and Parks Department to develop a carcass relocation program which moves carcasses that used to go onto ranch boneyards and attract bears and generate problems—we moved those carcasses onto our places.

It seems to be working pretty well. Bear populations are up on the East Front, and predation problems are down for both sheep and cattle, way down for bee incidents. In the community there is better acceptance, although certainly not unanimous, of both us and grizzly bears as reasonable neighbors.

In some, our experience is that the presence of the Endangered Species Act can help bring people to the table to try to find common ground between the needs of people and the needs of wildlife. We think it could maybe be made even more effective if you can add to it through your efforts, Senator Baucus, cost effective incentives for private landowners and other people to sit down and work early on rather than waiting until there is a crisis which pits people against people and against wildlife.

Thank you.

Senator BAUCUS. Thank you, Brian, very much.

Peggy, you're next.

#### STATEMENT OF PEGGY WAGNER, MONTANANS FOR MULTIPLE USE

Ms. WAGNER. Mr. Chairman, members of the subcommittee, my name is Peggy Wagner. I am a member of the Board of Directors of Montanans for Multiple Use, a grassroots group that represents over 2,500 multiple users throughout Montana. I am here today speaking on behalf of my membership and the Montana motorized recreation groups listed on my testimony before you.

I have also been asked to hand in 508 written testimonies that were brought to me from Central and Northwest Washington to change the Endangered Species Act. (See p. 81.)

The groups on whose behalf I testify today believe it is time for common sense changes to the Endangered Species Act. The above groups have experienced irreparable damage to motorized recreation opportunities because of the Endangered Species Act.

Today, environmental laws are in place, and our society faces significant economic problems and challenges. Further, recent application of the Endangered Species Act has demonstrated that it is a law in serious trouble. It is failing those who are dependent on our economic structure, such as businesses, labor industries, recreationalists and hundreds of communities.

The reauthorization must not simply extend the law but, instead, undergo a comprehensive review. The end result must be amendments to reaffirm the fundamental goal of conserving the endangered and threatened species while assuring that the decisions taken to attain this goal are legitimate and based on sound science and to also assure that the decisions taken to attain this goal truly balance species conservation requirements with the economic and social needs of the human community.

Forests, such as the Flathead National Forest in Montana, are noted for their array of outdoor recreational opportunities. We have a very active outdoor oriented population that lives in the State, partaking in such activities as snowmobiling, berry picking, scenic driving, hunting, firewood gathering, camping, and all-terrain vehicles.

Many people throughout the Nation hear of the great success story of the recovery of the grizzly bear in Northwest Montana, and



it is true the grizzly has made a remarkable comeback here in Northwest Montana. However, the bear made that comeback with open roads and with our ability to manage our forests through forest harvesting. Unfortunately, now that the grizzly is recovered, Montanans now face thousands of road closures and virtually no forest management at all. We disagree with the concept of road closures as a tool for wildlife management, when past history shows that motorized recreation can coexist in areas such as the Flathead National Forest.

The delisting process doesn't seem to be a functional part of the Act. On July 9, 1992, Montanans for Multiple Use filed a petition with the U.S. Fish and Wildlife Service to change the status of the grizzly bear from threatened to recovered. The information MFMU used on the basis of this petition came directly from the Fish, Wildlife and Parks data. Fish, Wildlife and Parks data shows that the grizzly bear population in these two ecosystems are recovered. Our petition was denied on the basis that they said that we had not enough scientific or commercial information. It seems ironic to us, when especially that scientific and commercial information came from the Federal Government in the first place.

We recommend that when making amendments to the ESA—we ask this committee not to leave the future of the Nation, with its abundance of supply of natural resources, in the hands of a bunch of misguided biologists and special interest groups that are looking out for themselves by creating expensive studies that will keep them employed and us broke forever. Let's responsibly manage our abundance of natural resources instead of forcing Third World countries to devastate their environment to meet the demands of an ever-increasing consumptive society. We believe that bears a better solution to managing species than imposing a total lockout of motorized recreation and resource management.

We can coexist with our wildlife and ecosystem. There is room for every user inhabitant in the forest, and history has proven it. I stress upon each and every one of you on this committee to remember the people I represent here are the people who make a living and recreate. We believe it is time to put humans back into the environmental equation.

That concludes my testimony on the reauthorization of the Endangered Species Act.

[The following is an example of the statements previously referred to by Ms. Wagner. All are identical and were signed by 508 individuals. The statements have been retained in committee archives.]

July 21, 1994

Senator Max Baucus, Chairman  
U.S. Senate Environment and Public Works

Dear Senator Baucus,

The Endangered Species Act (ESA) is a nightmare for those of us who depend on natural resources for a living. The threat of losing our jobs, and the destruction of our communities is real. We've seen it happen to our neighbors on the coast and we know the Grizzly Bear, Lynx, or some plant or bug could be our "Spotted Owl".

A law with the best intentions has become a powerful tool, used by extreme environmentalists, to lock up vast amounts land. People have been moved to the bottom of the list of species. The working people, the taxpayers of this country are forced to pay billions of dollars to support another government bureaucracy, give up their jobs, and even put their homes at risk, all in the name of the ESA. This is wrong! People must come first!

In order to bring balance and put the human factor back into the ESA, the following changes must be made:

1. Use only a biological and numerical definition of endangered species.
2. The socio-economic impacts of listing must be considered.
3. There must be just compensation on any taking of private property.
4. Individuals must have the right to protect their livelihoods and control endangered species threatening their livelihoods.
5. The ESA must recognize that extinction is a normal part of the natural evolutionary process.
6. Time and Expenditure limits must be placed on studies and recovery plans.
7. Accountability must be required of government agencies charged with saving endangered species.

The Endangered Species Act must be changed now.

Sincerely,

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Address:  
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Senator BAUCUS. Thank you.  
Janet, you're next.

# STATEMENT OF JANET ELLIS, MONTANA AUDUBON COUNCIL

Ms. ELLIS. Chairman Baucus and members of the committee, my name is Janet Ellis, and I'm here representing the Montana Audubon Council, the coordinating body of Montana's nine chapters of the National Audubon Society.

The Montana Audubon supports a strong Endangered Species Act. We look forward to working with this committee to ensure that the ESA authorization legislation carefully examines the facts on this issue, dismisses the rhetoric and develops a thoughtful piece of legislation.

Because of the time limit, I will restrict our testimony to making two points. My first point is that we want to express our support for the multi-species approach to the recovery efforts proposed in S. 921, your bill. By grouping species for recovery efforts, we can get much more bang for the buck. We can provide species that have similar needs with similar care. We can also practice preventive medicine on candidate species that look like, if we don't do something now, they may end up becoming threatened with extinction.

As you are well aware, Montanans treasure all of our wildlife resources. We are proud of the fact that our State can still brag about having almost all of the same species living here today that were present 200 years ago when this great Nation was established.

Clustering species recovery efforts is critical in order to expedite recovery of our rare wildlife. Without it, we would continue to lose our rare plants and animals to extinction, and our children will be faced with a world of more weeds, insect pests and deserts and fewer songbirds, wetlands and grizzly bears.

The second point I want to make is a brief comment on our perspective on providing the States a stronger role in administering the Endangered Species Act. This is based on a personal experience. Part of our skepticism about the States' commitment to the protection of our rare animals stems from the State of Montana's lack of concern and effort on working to protect even candidate species, and I did want to briefly talk about one candidate species, lynx, which are Category 2 candidate species that the U.S. Fish and Wildlife Service has agreed to do a court ordered status review on by November 15 of this year.

Since quotas have been established and this is a harvested animal in Montana, trappers have not been able to come even close to harvesting the recommended quota because it was set too high. Trappers came the closest to the quota in the winter of 1984 when the quota was set at 135 and the trappers were successful at harvesting 69, just 51 percent of the quota.

As an indication of how much our population has seemingly crashed, the Statewide quota went to 10 for the winter of 1991. Only three lynx were harvested, however, that year. The current Statewide quota is for two animals, and the Fish, Wildlife and Parks is currently recommending we raise that quota.

What is disturbing to us about this management is that this is a candidate species. A lot of people, both citizens and scientists, are concerned about lynx populations. There's no scientifically based



population information or estimates of suitable habitat for lynx, and yet they continue—Fish, Wildlife and Parks' only program is to recommend harvesting.

Our bottom line is that whatever changes are made in the Act to accomplish a stronger State role, the ultimate goal of the Endangered Species Act must be to do the best thing for the species. Our experience with the State of Montana indicates that they do not always have the best interests of rare species in mind.

The Endangered Species Act is based on a very important premise, that no generation has a right to destroy the environment and our natural resources that our children and future generations depend upon. On behalf of the 2400 members of the Montana Audubon Council, we ask you to protect this critical law as an investment in our future and future generations. Thank you.

Senator BAUCUS. Thank you very much, Janet.

Keith, you're next.

### STATEMENT OF KEITH OLSON, MONTANA LOGGING ASSOCIATION

Mr. KEITH OLSON. Senator Baucus, these 642 family-owned businesses which comprise the membership of the Montana Logging Association are proud to be here today.

To be clear, the MLA agrees that we, as a society, must endeavor to avoid the extinction of truly endangered species, and if this hearing has proved anything to me, Senator, it has proved that Congress simply must endeavor to write environmental laws which do not pit humans against their environment, and this comment is not limited solely to the ESA but to the myriad of this Nation's environmental laws. As I've told you before, Max, there seem to be nuclear equations out there that are less complicated than this country's environmental policy.

As regards this hearing, we suggest that the ESA amendments which promote human activity, which foster stewardship in the ecosystem and which advocate State authority are crucial to achieving the intent of Congress, the acceptance of a broader society and the recovery of once endangered species. Human involvement is critical because only through management can we provide for the responsible and sustainable conversion of forest resources and the economic benefits necessary to perpetuate the forest, its resources and local communities.

The ESA's few successes and the growing list of candidate species serves to emphasize the hopelessness of attempting to recover single species in site-specific habitats, and although we are wary of the concept of ecosystem management, if it incorporates the principles of forest stewardship, it may be the most effective way to meet the social, economical and biological challenges of the future, for rather than excluding human activity, the principles of stewardship recognize that habitat manipulation is crucial. It's critical to the maintenance of healthy forests.

Lastly, in order to develop and facilitate stewardship within the ecosystem, State agencies must become the leading authority. Local communities must have confidence that scientific review and recovery strategies are legitimate rather than political. Furthermore, the continued spectrum of a Federal regulatory hammer wielded by a

centralized and distant bureaucracy serves only the suspicions of those who believe Congress and the administration are indeed waging a war on the West.

So, too, we believe that the cooperation of the majority of private landowners can only be achieved through State leadership and local involvement. However, while we unequivocally agree with those who seek to amend the ESA to clarify Constitutionally protected property rights, we are equally committed to resisting the notion that national forests and, thereby, resources and the local communities should be condemned to the economic consequences of the ESA as written.

Wildlife is a rich part of Montana's heritage, and the vast majority of Montanans support protection for truly endangered species. However, without amendments which incorporate real science, common sense, democratic principles and economic sustainability, the ESA will simply continue to frustrate Congressional intent, public expectation and the recovery of endangered species.

Thank you, Senator.

Senator BAUCUS. Thank you.

Gary, are you going to get next to that logger?

#### STATEMENT OF GARY LANGLEY, MONTANA MINING ASSOCIATION

Mr. LANGLEY. Yes, I'd better.

For the record, my name is Gary Langley. I am executive director of the Montana Mining Association.

Let me first emphasize that the mining industry supports the concept of the Endangered Species Act. It's become known lately as the pit bull of environmental laws, and that's because, quite frankly, it's being used for political purposes to stop economic and recreational activities.

Since the Endangered Species Act was passed, 558 species have been listed an endangered, and 728 species have been listed as threatened. Yet, only 325 recovery plans have been completed, and a mere 16 species have been delisted. All of this has occurred at a cost of \$4.6 billion. Think of all the food we could have purchased. Think of all the housing we could have filled. Think of all the things for people we could have done with that money.

Listings have increasingly targeted specific industries. The greatest success, of course, is in the timber industry. It appears mining is going to be next.

The Endangered Species Act has contributed to the political uncertainty that has brought mineral exploration in Montana to a virtual standstill. A few years ago, about \$36 million a year was being spent on exploration projects in Montana. Today, less than a million is being spent.

A good part of the reason is because of the unstable political climate that is being generated by the Endangered Species Act, proposed repeal of the General Mining Law and the constant demand for additional wilderness in Montana. So what you're doing by creating this uncertainty is making the second generation of mining, that's exploration, virtually extinct, and if this trend continues, the life expectancy of the mining industry in Montana is going to be limited to only part of the reserves that are currently being mined.

We believe the following changes should be made to the Endangered Species Act. First of all, the recovery plan should be the focus of all Endangered Species Act decisions, and the recovery plan should be completed, not delisted, but the recovery plan should be completed within 18 months of listing.

The listing process should be revised. Current determinations many times are made on highly suspect, biased and selective information that probably is more appropriately published in People Magazine than scientific journals. The Act should be changed to place the responsibility on the Fish and Wildlife Service to collect data based on the best science to support listing decisions.

Third, private landowners should be given the opportunity of other Federal agencies to consult with the Fish and Wildlife. As the system now stands, they don't have that option.

The definition of the term "take" should be revised. Currently, private property owners are prohibited from taking a species. Take can mean harassing, harming, pursuing, hunting, shooting, wounding, hurting or capturing a species that has been listed as threatened or endangered. This would include any action that might cause damage to the species physically or psychologically.

I live on Hauser Lake near Helena. Every November we get hundreds of bald eagles on ponderosa pines on my property. Am I a criminal under the Endangered Species Act if I walk out on my deck to view the eagles? We don't know under the current legislation.

In summary, the Endangered Species Act was born with good intentions, but instead of being nurtured into maturity, it has been reared in the political back alleys of the East. For those of us in the West, it now packs the punch of Mike Tyson with bad intentions.

I thank you very much, and we look forward to working with you.

Senator BAUCUS. Thank you, Gary.

When some of you were speaking, it occurred to me it might be useful for me to explain what I'm trying to do with the Environment and Public Works Committee. I took over as chairman of this committee a little over a year ago. When I took over, I decided not to go back and automatically turn the crank and reauthorize all the major environmental statutes.

First of all, this committee has jurisdiction over most of our country's major environmental statutes as well as jurisdiction over public buildings and highways. That's the public works part of it. It's the Environment and Public Works Committee. The major environmental statutes are the Clean Air Act, the Clean Water Act, Endangered Species Act, Super Fund, and Safe Drinking Water Act; the major environmental statutes that this country operates under.

So instead of going back and reauthorizing, I put them all on hold and, for a year, held what I called taking stock hearings from which I tried to get a sense of which of the statutes work, which ones don't work. Where do the gears mesh? Where do they grind? Where do our present environmental statutes cause more problems than they're solving? Where do they hurt people more than they



should? Where do they cause problems for State agencies more than they should?

I learned a lot in those hearings. One is, our basic environmental statutes are unrelated to each other. Congress has passed nine major environmental statutes and has paid no attention to how each is related to the other.

Our environmental statutes are really quite young. Essentially, they're 20, 24 years old. They come as a consequence of the Love Canal. Remember the Cuyahoga River that was so polluted, it caught fire. Congress basically in the 1970s passed most of our Nation's major environmental statutes, reacting to a crisis, responding to a problem.

In some cases it's worked pretty well, and in other cases they've not worked well at all. They worked fairly well in restoring some of the waters of the Nation, the rivers and lakes. Lake Erie once was dead. It's been restored. The Cuyahoga River doesn't burn anymore. The area around Washington, D.C. used to smell because of the polluted Potomac River. Now, it doesn't smell anymore and people are fishing there once again.

But we're at the stage now where, in my view, our environmental statutes have now come of age.

Superfund isn't working at all. Everyone will agree to that. It's just an astounding failure. Congress passed Superfund only six months after Love Canal. Love Canal was on national TV news, papers and so forth, and so we passed Superfund to clean up waste.

What I'm trying to do now is take all these statutes and make them work better trying to do my part to end the religious wars that basically occur between the environmental community on the one hand and development, for want of a better expression, on the other, and they have been religious wars. Neither side would talk to each other.

To go back and look at some of the statutes, has not been glamorous. It doesn't get headlines. It's heavy slogging. It's hard work. You've got to go through all these provisions, have lots of hearings and lots of meetings. It's an endless number of meetings with all groups of people, as they try now to get Superfund working again.

Congress, I think, will reauthorize Superfund this year, and it's going to work a heck of a lot better than in the past. The Endangered Species Act will not be reauthorized this year, but maybe next year, and this hearing and other hearings we are holding will produce suggestions that will help us make it work a lot better and not cause near as many problems as it has in the past.

We also passed amendments to the Safe Drinking Water Act so that communities like Ronan would be able to afford quality drinking water.

We made the changes in our committee and the on the floor of Senate and now we're waiting for the House to make the same changes without diminishing the quality of drinking water by getting new off-the-shelf technologies and various different approaches. It's not glamorous.

That's what I'm trying to do here with the Endangered Species Act, that is to cool the rhetoric. You can't forget the emotion, it's there. Life is emotion too, but to channel the emotions toward a constructive solution. There's nothing easier than to complain and

do nothing. The alternative is, obviously, to do something, and I'm trying to do that here. The comments and suggestions that each of you have made has helped.

Keith, you talked about stewardship. That's exactly right. We're trying to find a way to make this thing work.

Everyone has. I want to thank you for your efforts here. We've been at this thing for several hours today. I do want to thank you.

You made a point, Peggy, about bears coming back with open roads. Why in the world close the roads now?

I'd like to ask Brian and Janet: What about that? Brian, you might know a little more about bears. It doesn't make much sense to start closing roads if the bear is coming back.

Mr. KAHN. Max, I think we have a problem of lack of expertise here. I know something about grizzly bears on our ranch. I know nothing about grizzly bear and roads. It's not my business. I think if Mr. Craighead or Mr. Servheen were still around, they could answer the biological question. I can't.

Senator BAUCUS. Peggy, you talked about sound science, balance of needs. Don't leave scientific decisions to academic eggheads.

Ms. WAGNER. That isn't what I said.

Senator BAUCUS. I know. That's my phrasing. Put humans back into the equation. Have you had a chance to look at the bill language in these charts to try to get a sense of whether any of this, in your view, does any of that or not?

Ms. WAGNER. What I've done on my testimony, Senator Baucus, is—I actually have 12 pages of testimony, and I knew I couldn't read all that. There are three pages in my testimony of the recommendations that we would like to see as amendments to the Endangered Species Act. There's 14 of them listed, if you would like to review them.

Senator BAUCUS. I appreciate that. I'm wondering whether these provisions I have written into the bill help do that. The sound science, that's certainly one of the provisions. Bring humans back into the equation, that's certainly—

Ms. WAGNER. But is it sound science, or is it conservation biology? There's a difference between the two.

Senator BAUCUS. It's independent scientific peer review, outside of the Fish and Wildlife Service, outside of the Forest Service, outside of the agencies.

Ms. WAGNER. That's the concern I have is, we have studies going on right now at the South Fork of the Flathead up Hungry Horse Reservoir in the grizzly bear recovery. It contradicts other studies that have been done, and when I read the study, there's a lot of words in there that says, We assume. This could be. This is our opinion. To me that's not sound science. You've got to have sound science.

Senator BAUCUS. Brian?

Mr. KAHN. I spent five years on the California Fish and Game Commission, and I listened to scientists from different interests argue about different things. If they were paid by industry, they typically said, The economic activity in question is not a problem. If they weren't, they had a different view.

I don't know how you determine sound science, but I can tell you as an elk hunter and avid sportsman—this goes to your question.

I'm not speaking for the Nature Conservancy. This is Brian Kahn, a Montanan. If the best bear biologists recognized in the State of Montana—maybe we could decide who that is. I don't know who they are. If they tell me going up into a certain area with motorized vehicles at a certain time of year is going to interfere with important grizzly bear activity and I've got to walk in, I'll walk in. That's the way I feel.

Senator BAUCUS. Thank you.

Ms. WAGNER. I would like to give an example of the South Fork grizzly bear. They're saying that the females with the cubs are staying on top of the high alpine ridges because the lower elevations have roads, so they feel motorized recreation or any kind of activity is keeping the females up there, but there was also a study in Alaska where it shows the females with cubs stay on top of the alpine ridges because the male bears stay at the lower elevations, and the male bears kill the cubs and eat them. That's why the females stay up there.

So, I mean, who's got the sound science? When we have studies contradicting each other, I have a real question about some of the studies that are going on.

Mr. KAHN. Just one quick thing. I think there's a process going on here which I personally find difficult. Just walking into this meeting room, we had two rallies of real honest people with strong feelings, chanting and, you know, rallying and stuff. I think there's a little discussion here. We have two people. She's certainly as honest as I am, and we sat down, and we probably can figure out we agree on about 90 percent of this stuff. I just feel that the process you are involved in of trying to find solutions that work for everybody doesn't make headlines, but that's what has to happen.

This is not a football game. We've got people's livelihoods at stake, and we have wild species' futures at stake, and those are serious issues, and those are best resolved if people sit down and try to find common ground, and I appreciate the efforts of the people working on this.

Senator BAUCUS. Why don't you and Peggy and Janet and Keith and Gary go up the South Fork and walk around with the biologists and make up your own minds as to why the sows are up there and not coming down? I think you have a point. I try to encourage people such as yourselves and Peggy to go and look at the problem and have a cup of coffee, talk about it. In my experience, nine times out of 10 there's a lot more agreement than disagreement, and I encourage all groups to do more of that.

Gary?

Mr. LANGLEY. If I could just make a point, you know, I think a lot of these listings are actually based on the significance of the species. When people think it's the Endangered Species Act, they don't perceive it to be—they think of the grizzly bear or the bald eagle or a significant species of plant or animal. They don't think of a snail that becomes an endangered species just because its sex organ is bigger than another snail's, and they don't think of a lily that grows on private lands on ponds in Texas.

I think the Fish and Wildlife Service depends entirely too much on the so-called "science" provided by advocacy groups and not enough on science that is objective and independent.



Senator BAUCUS. That's a good point, and, frankly, one of the provisions in this bill is to tell the agencies to give priority to key species, so it's not everything the same. You're right. There's going to be some differences among the value to some degree of the species.

Not entirely. I don't want to overstate that point, but to some degree.

Mr. LANGLEY. I think you're closer. Thank you.

Senator BAUCUS. I appreciate that. We're kind of behind.

Keith?

Mr. OLSON. Real quick, Max. The organization I work for, the leadership, has been debating for about the last five years, and they're pretty independent characters, so it's tough to always get them together. They've been debating the establishment of the accreditation program, the pursuit of professional standards in our industry.

They've authorized the pursuit of professional standards and the voluntary accreditation program. The only reason I guess I bring that up is, that the very first professional standard that we pursued with the five-day course up in Yellow Bay was forest stewardship so we could converse with forest managers and, more specifically, NIPF landowners about the efforts and such of forest stewardship, and that's made the difference.

We're seeing it happen out on the ground, certain contractors working in areas where they can impact the management objectives of these landowners, and the bottom line, I guess, is, and all I'm trying to say is, it's being ground approved. Something is happening on the ground that's different and better, and all of this is final. Change the Act. Reauthorize it. Jump through the hoops of public hearings, and go through the rhetoric of the biology and the science and everything else, but it doesn't change things on the ground for the betterment of man and animal out there.

Senator BAUCUS. I appreciate it. Thank you very much, all of you.

We're going to our open mike session. Here's what we're going to do. Anybody that would like to speak, here is your chance. I'd like you to line up behind each of these two mikes, just line up behind the mikes.

I'm going to hold you to two minutes. Any written statements you have will be collected and brought back to Washington to be reviewed. If you want to get to the bottom line, here's your chance to do it.

I'd like each of you to give your name, where you're from, and alternate left and right here.

#### STATEMENT OF STAN FRAZIER, HELENA, MT

Mr. FRAZIER. Thank you, Senator. My name is Stan Frazier. I'm from Helena.

We've heard talk today about science and how the Endangered Species Act must hinge on science, but then we've also heard talk on how it must include social and economic input. However, science is science, and social input does not change science. One doesn't have anything to do with the other. If this is going to operate on science, it ought to be operated on science, not social input and not

political input, and, quite frankly, that's a reason we're in this mess that we are now.

A perfect example is the U.S. Forest Service, which is supposed to be managing and protecting our forest lands. They've been mismanaging our forest lands for political reasons, and if we could only get our government agencies to do the job they're supposed to do, we could avoid a lot of these problems. We're in a situation where you virtually have to sue the Forest Service to get them to follow their own forest plan, and follow environmental law. Citizens should not have to sue their government agencies just to get them to do what they are supposed to be doing in the first place, and if you could see that our government agencies do what they're supposed to do, that would solve a great many problems.

Thank you.

Senator BAUCUS. Thank you very much, Stan.

Next?

#### STATEMENT OF KEN BLOOD, MONTANA STOCKGROWERS ASSOCIATION, MALTA, MT

Mr. BLOOD. Ken Blood from Malta.

I am the endangered species chairman for the Montana Stockgrowers Association. I met with you and your staff, and a lot of these improvements that you are proposing are things we already talked about, but what I want to speak on is my experience with the black-footed ferret in the Southwest.

I sit right in the middle of the black-footed ferret reintroduction area and have been involved in working with—in writing the recovery plan. Right now, we are waiting for the final rules of the game to come out. We were supposed to reintroduce ferrets last fall. The rules should have been on the ground then. It still is not on the ground, and we're looking at two months from release. You know, we've got to have the ground rules of the game out there before we know whether we want to continue with our support of the project.

So I reiterated that to you a time or two already.

Senator BAUCUS. Do you want a recovery plan?

Mr. BLOOD. The recovery plan is out there. We're waiting for the final rule and waiting and waiting and waiting. What I am saying is, we thought they were going to have a comment period after the final rule came out, and I found that maybe not true, and I thought if somebody messed with it we would get a chance to look at it. Anyway, my complaint is, we need to know the rules of the game. It's still not out.

Senator BAUCUS. I'm asking Curt here who works for me, what the answer is, and he gave me a semi-answer, but we'll get a full answer.

Mr. BLOOD. Again, we're looking at they're supposed to turn them loose in October, and there's still nothing.

Senator BAUCUS. Something about Wyoming numbers aren't good or something?

Mr. BLOOD. No. They have the ferrets. It's just—

A Voice. Bubonic plague has affected some of the ferret numbers on the release areas in Wyoming, so they are holding back.

Senator BAUCUS. Okay. I'll find the answer, Ken, and I'll give it a shot and we'll get it done.

Mr. BLOOD. Very quickly, a couple of things.

I think it would be very important in your bill that you include some sort of cost accounting. I think you owe it to the taxpayers to let them know how much this stuff cost.

Another thing that's in your bill is, you put a tremendous burden on public land users. Be careful that you don't squeeze them to death. You put a lot of emphasis on public lands in your bill.

Senator BAUCUS. Right.

Mr. BLOOD. So be careful you don't put too much burden on those public land users. Thanks.

Senator BAUCUS. Thanks, Ken. Thank you very much.

#### **STATEMENT OF STEVEN THOMPSON, KALISPELL, MT**

Mr. THOMPSON. Senator Baucus, my name is Steven Thompson. I live in Kalispell.

I want to relate a success story that addresses a very specific issue that was raised a couple of panels ago. This concerns issues related to wolf depredation and wolf recovery.

Just north of where I live, the Murphy Lake wolf pack has recolonized on its own, and it's doing well in the Murphy Lake area out near Trego. There have been no cases of livestock depredation.

However, several months ago, a rancher—there's a lot of cows in that area. A rancher had come across a bunch of wolves on one of his dead cows, and he was angry. If he had the right at that time just to pull out a rifle and shoot the wolves, he very well may have done it. He called the Fish and Wildlife Service, and they came immediately. Within hours they were there, and what they discovered is that—and everyone agreed to this. It was perfectly conclusive that that cow had been killed by a logging truck, and those wolves had come in once he had a dead cow.

So I would caution against giving ranchers or livestock operators the ability to just shoot an animal for good reason, where they think they may have killed some of their livestock.

Senator BAUCUS. Thank you, Steve. I appreciate it.

#### **STATEMENT OF JULIE WARNER, MISSOULA, MT**

Ms. WARNER. My name is Julie Warner from Missoula.

I would like to point out something that I think maybe was missed a little earlier. There was a gentleman up here talking about how he had acres and acres of forest he couldn't log because of two owls, and as we sit here today on this hot Saturday afternoon, that's true, but 10 years from now, 20 years from now, 30 years from now, he will be able to log that land because there will be 10 pairs of owls, 12 pairs or whatever. The owls will have recovered, and so he's not being totally locked out of his land. He's only being temporarily locked out of his land, and the Endangered Species Act, some of the effects are only temporary, and not permanent, and that's basically it.

Senator BAUCUS. Thank you, Julie, very much.

#### **STATEMENT OF JIM MERKEL, MISSOULA, MT**

Mr. MERKEL. My name is Jim Merkel from Missoula. Some people say—

Senator BAUCUS. You've got a lot of notes there.



Mr. MERKEL. Yes.

Senator BAUCUS. I'm just giving you a hard time.

Mr. MERKEL. Some people say, put humans back in the equation, but since the Europeans came to this part of the country and slaughtered the people who were living here and slaughtered the buffalo along the way, the humans have been the only thing in the equation.

The woman, Rhonda Swaney, from the Confederated Salish and Kootenai Tribes, who testified, who talked earlier, didn't mention economy or jobs once in her presentation, and Native American people are typically some of the least dollar-wealthy people in our country, yet they still have a great value of all species.

I have four points. The Act is very—way too weak now and should protect for healthy populations, not extinction level. Currently, we can bring every species to extinction level before it gets protected. That's absurd. Grizzly bear are at 1 percent of their traditional numbers before Europeans invaded this place. That's a tragedy, and we should be managing for healthy populations, not extinction level.

Goal number two is to end human management. For millions of years, wildlife did fine without human intervention in managing. Wildlife management is an oxymoron, and that should be the goal of our programs is to end human management.

The third point, support the Northern Rockies Ecosystem Protection Act and the welfare for timber corporations and welfare for mining companies and welfare for cattle and sheep ranching and grazing. The fourth point is, economics must be removed from the process. It must be scientifically based.

Just a last point. The traditional people of this land believed that when someone stood up on the platform and spoke for their own personal interests they were forever ashamed by the people, that no one would stand up and speak for their own personal interest, dollar-wise or otherwise. So I'm asking that you listen to that, and people should feel ashamed of that, and we should be speaking for the future generations of the unborn and the voices who are—voiceless who have voices that we haven't learned to hear yet. The plants have voices. The animals have voices. We haven't got intelligent enough to listen to them.

Senator BAUCUS. Thank you, Jim, very much.

#### STATEMENT OF MR. WILL SNODGRASS

Mr. SNODGRASS. Good afternoon, Senator Baucus. I am Will Snodgrass.

The Endangered Species Act. Species. Animals. Man. Endangered. Given thought, even modest vision and courage, reality is not deceived. Discomfort prevails among many species, including man and, of course, the young amidst a rapidly failing planetary system. The Indian word for this is hawana swatsi, life out of balance.

I'd like to talk here a little bit about the elephant, the elephant of denial, the emperor-has-no-clothes kind of elephant, the elephant in the living room or living environment, if you please, which everyone pretends to ignore, but there it is, plain to see.

The term "endangered species" applies to all of us, even in the secular term. We are all in the same living room, so to speak, and I believe we should all acknowledge that fact. It is a relatively small concept, really, round, 25,000 miles around, and like any highly evolved, complex, living thing, highly vulnerable. One minute alive, and the next minute dead, so to speak.

Endangered species. Habitat. Air. Water. Food. Shelter. I believe we are all beginning to get the picture. Reality does not deceive.

Jacques Cousteau said, The fight of the planet lay on the ocean tide. The forests are dying. In other words, both lungs and the planet are in serious trouble.

In 1977 Dr. Zube, one of the leading aerosol scientists, when asked, How bad is it? said, Concern yourself with living long enough to reproduce. We are now witnessing widespread reproductive failure in animals and man and abnormal forms. Our atmosphere has been heavily contaminated with countless toxins. Our rivers, streams, lakes and oceans have become so polluted that fish are now developing with two sets of reproductive organs, both male and female, and they cannot reproduce, and they are so contaminated they are classified as hazardous waste.

Environmental illness and sensitivity, ISD, immune system dysfunction, are now household words in a world of increasing chemical injury. Cancer is ranked as the leading cause of death among children today. Youngsters agonize and suffer with their own awareness of environmental degradation which has become so pervasive and inescapable.

Environmental pollution, degradation and dysfunction, so profound is the death that the consequences cannot be imagined.

Senator BAUCUS. I'm going to ask you to sum up, Will.

Mr. SNODGRASS. Yes. As quickly as I can.

Senator BAUCUS. I mean like right now, about two sentences.

Mr. SNODGRASS. Thank you.

Deforestation is proceeding so rapidly in North America, at twice the rate of Brazilian rain forest destruction, upsetting global maintenance such as water. Vital mechanisms essential to planetary survival have been thrown out of balance by those who toy with forces they do not understand, and, worse, we ignore the essential needs of animals and fellow men, manipulating the environment for profit and political power.

Senator BAUCUS. I'm going to have to ask you to stop, Will. There are a lot of other people that want to speak. I appreciate that very much.

Mr. SNODGRASS. That red light, Max, was on a great deal during this afternoon's testimony by industry, and I would perceive your interruption as a violation of civil rights and, in particular, censorship in the State of Montana.

Senator BAUCUS. Okay. Next.

#### STATEMENT OF MS. BOBBI SCHUMAN, VALCON OIL, BILLINGS, MT

Ms. SCHUMAN. My name is Bobbi Schuman, and I represent Valcon Oil and the oil and gas industry in Montana. I am from Billings.

There is nothing so beautiful and heartwarming as a bird in flight, soaring majestically through the air, and there's nothing so devastating as realizing you cannot work in order to feed your child.

Earlier this year, my company was forced to shut down a \$1.2 million a month drilling operation in Utah due to the presence of the mountain plover. The mountain plover is a candidate in the Endangered Species Act. This operation is an existing 30-year old oil field in the Utah desert on Federal land overseen by the Bureau of Land Management. This is a Federal agency. It can happen in Montana. This happened to happen in Utah.

Normal operations of our company had been drilling a well a week with each well costing about \$330,000 to drill. Of that we estimate that 25 to 30 percent went to wages, the majority of that to local communities. When we had to shut down, that meant the livelihood of 70 families was in jeopardy. Any birds, however, were just fine. In fact, the government representative alluded to the fact in public that in a contest between plovers and 70 families he'd like to see the plovers win.

The Bureau of Land Management freely admits they have no evidence that our operation is damaging to these plovers, but they shut us down anyway. It would seem that their very presence at the 30-year old oil field should be enough to show that the birds aren't terribly bothered.

The mountain plover is a candidate species, a species for which there is some data, but not enough, to require listing. However, in real life, we have learned that candidate species are treated essentially the same as species which are actually threatened or endangered. Senator Baucus, this proposed plan for reauthorization of the Endangered Species Act includes the proposed additions of a large number of additional candidate species to the list of plants and animals that are to be offered protection. That is the single most flaw in Senator Baucus's plan, and we ask that that be relooked at.

It is absurd for the government, our government, our tax dollars, to allow people to starve, to take away their livelihood, to shut down industry in order to gather additional data and evidence on a species that is not known to be threatened or endangered. Thank you.

Senator BAUCUS. Thank you.

Next.

#### **STATEMENT OF TROY MAYNARD, WILDLIFE SOCIETY OF NORTH AMERICA, GILLETTE, WY**

Mr. MAYNARD. I'm Troy Maynard with the Wildlife Society of North America. I am a research director.

When I got in here last night someone said you alluded to the fact there weren't many victims to the ESA, and that just immediately brought to my mind that I would like to have brought Bob O'Connell from my town of Gillette. It's 640 miles from Gillette to here, and Bob's not in shape to travel yet because a grizzly mauled him so bad that he just barely got out of the hospital, and half of his scalp has been torn quite badly as well as his back and arms. I would daresay that he is a victim of endangered species. They



didn't relocate the bear, and, of course, God forbid we would shoot a bear that would attack a human. No. They closed a portion of the park, Yellowstone, to protect the poor little bear. I think that shows you clearly that animal rights are above people rights in this Act, and we've got to put the people factor back in.

I think a little bit about these hearings, is I've been to a number of them, and I recall a line that comes out of the popular movie, *The Hunt for Red October*, where the national security advisor of the President said, Look. I'm a politician, which means I'm a liar and a cheat, and when I'm not kissing babies, I'm stealing their lollipops, and I daresay what happened is, today, we are trying to kiss babies, but when you go back to D.C., if the standard procedure follows, that we'll be stealing their lollipops.

Only one problem with that. One is it's not babies. It's the hundreds and hundreds of people you stood before whose jobs and livelihoods are on the line. It's not the lollipops you're taking. It's their livelihoods. It's their jobs. It's their future for them and their children.

You've got to put the people factor back into the Endangered Species Act. You've got to consider that nature has killed far more species than man has ever touched. What can we point to? We could possibly point to the fact that man has taken out the passenger pigeon, possibly taken out the parakeet, but the fossil records have thousands and thousands that nature has eliminated.

We've got to have man's management. That's the only species that can save species. Wolves don't put together a symposium when they're starting to depredate and cause a decline in the caribou population. People's rights have got to be considered. You can't just go on this thing about, it's just business as usual. Let things go as they may. It will destroy itself. It's only with our management that we have a good environment. It's only by our management that we have the wildlife we have today. Thank you.

Senator BAUCUS. Thank you.

#### STATEMENT OF TIM STEVENS, LIVINGSTON, MT

Mr. STEVENS. You've got to be tired.

My name is Tim Stevens, and I'm from Livingston. I'd just like to address a couple of things here.

Number one is, it's true species have always gone extinct, and they will continue to do so, but the problem is humans have greatly accelerated their rate of species extinction. I know that's something that you know, but that should be something everybody should take into account.

Something else I found pretty interesting. The big thing for today was that of sound science. We need sound science, and the Act as it is now calls for the best scientific data that's available. That's already in the Act. There's also a number of balancing mechanisms already in the Act which I've heard enumerated today, but let me call them out: The assistance of the God Committee, the incidental take permits under Section 9, the Federal agency consultation.

I'm sure you know the statistic that of the 120,000 Federal agency consultations under Section 7 only 34 projects were stopped. That is a fact. There's a wide variety of ways. I'm sure you know that upon listing of a species then, after the species is listed, under

scientific principles, then you take into account socioeconomic factors.

When they were doing this for the spotted owl in the Northwest, they eliminated about 60 percent of the proposed critical habitat for the species. I guess kind of a rule of thumb I hope you'll keep in mind with this is that the species are merely representing ecosystems that are being wiped out. Grizzly bears have been reduced to 2 percent of their current range. The ancient forests in the Northwest have been 90 percent clear-cut. The list goes on and on and on. When you hear about these stories, just think back to what it is that they're representing, because these species are merely messengers and they're giving us an important message because we're dependent on the systems, not the species, but the systems that these species are a part of for our water, for our air and for our survival.

So I thank you for your leadership on this issue, and I encourage you to stand strong on 921.

Senator BAUCUS. Thank you very much, Tim.

#### STATEMENT OF DELON OLSON, HUNGRY HORSE, MT

Mr. DELON OLSON. My name is Delon Olson.

I'm a native from Hungry Horse, Montana, and to answer your question—he asked a bit ago about grizzlies and roads. I've seen three grizzly in my life. One of them wasn't near a road. One of them was walking right down the middle of the road. It didn't drop over and die from the horrible thing. The other one was crossing an actual paved road. Oh, my God. They can't survive with the road there.

The thing that upsets me a little bit here is that I'm, quote, unquote, "an environmental killer" here. I'm very much into wildlife. I love wildlife. I love the outdoors. I don't want to see anything be killed. What I am against is being forced out of my forest.

I heat my house in the winter with firewood. I can't get up to get the firewood anymore because there's a gate. This fellow says, if he sees a gate, he'll walk around and go up and hunt. Okay. He can walk around it and go up and grab my five cords of wood that I need for the year and haul them down.

The roads are not hurting that many things. You need to have the local communities involved more than somebody sitting over in D.C. who has never even been out here, probably never worked a minute in his life, telling us how to live. Montana was populated by people who moved out here because of the fact they did have their own opinions, and they didn't like to be pushed around. Now, we've got a lot of people moving into the State, raising up our tax bases and lowering our wages and taking away our jobs, telling us how to live our lives, and it's not going to happen very much longer in a peaceful-type way.

Senator BAUCUS. Thank you very much.

#### STATEMENT OF CLYDE SCHRECKENGAST, FLORENCE, MT

Mr. SCHRECKENGAST. I am Clyde Schreckengast, a Florence, Montana native, just south of Missoula.

Growing up in a very primitive, if you will, location, we didn't have grizzly bear, and we did not have grey wolf, and I can assure

you that recovery of these animals would be a pure delight. However, expansion of their territory gives me considerable concern because of the compatibility of these animals with humans.

I point out to you that my old biology professor said that a Chinese proverb says, There's a tiger on top of every mountain, and this refers to the ecosystem that starts from the lowest amoeba and works its way up through the chain by each feeding on the other until it finally gets to the tiger. If you will notice, the grizzly bear in particular, and the wolf to some extent, are the tigers on top of the mountain. That is to say that we cannot conquer—we cannot tame them.

Even Lewis and Clark said that the grizzly bear was an untamable, uncontrollable type of animal, and, therefore, we, as humans, must live with these animals, but we must establish their borders to the extent of saying, Do you, fellow, know you are going into grizzly country? Then and only then.

So the great anthropologist, Margaret Mead, said, "I am not at all concerned about the survival of the human species, but I am very, very concerned about the quality of life."

So what are the endangered species? I kid you not. It is ourselves.

Thank you.

Senator BAUCUS. Thank you, Clyde.

#### STATEMENT OF MAUREEN OLSON, MISSOULA, MT

Ms. OLSON. Maureen Olson from Missoula, Montana.

As Mr. Bloomquist, the attorney from the Montana Stockgrowers, spoke and then engaged in an interchange with you, Senator Baucus, and during the testimony of the second gentleman on the salmon panel, I was reminded of the historic saga of the white man pushing west to occupy more and more land while driving the original human occupants onto smaller and smaller parcels of land, claiming, disrupting and destroying their habitat in the process.

I find it interesting that Ms. Swaney, a descendant of these Indian people, speaks so eloquently about living in an accommodating nature with other animal species. Those of us willing to continue to treat non-human habitants as we did the Indians should take note and learn from Ms. Swaney.

The Endangered Species Act was designed to protect animal species threatened by human activity by providing them with an environmental safety net in order that they may continue to live not only in picture books. I'm here to oppose any attempt to compromise or depredate these provisions. Recent attacks upon the Endangered Species Act seemed to be driven by a desire for economic gain by timber and mining operations and other development.

I must speak up for those animals who cannot speak up for themselves, for man is only one of many species. We like to think of ourselves as the highest or most advanced species, but a willingness to destroy the habitat of our fellow animals and ourselves for dollars in someone's pockets is not my idea of advanced humane behavior.

Mr. Baker of the Sierra Club spoke about economics, and so will I. Opponents of species protection may believe that harvesting and selling our public forests like crops and digging up the earth for



gold and other minerals translates into economic well-being. According to Dr. Tom Power, chairperson of the Department of Economics at the University of Montana, our economic future depends upon preservation of our wildlands and the animals in them. To live for the moment, to engage in a feeding frenzy upon the habitat of species who make those wildlands their home is to forsake our children and our children's children.

By so doing, we are destroying priceless, irreplaceable habitat and animal life upon which our progeny must depend for their economic stability in years to come. Greediness could ruin that future.

I'm counting upon you, Senator Baucus, to act with foresight and see that that does not happen.

Senator BAUCUS. Thank you, Maureen.

#### STATEMENT OF NINA NIYAI, MISSOULA, MT

Ms. NIYAI. My name is Nina Niyai.

Senator BAUCUS. Your name again for the reporter.

Ms. NIYAI. N-i-n-a, N-i-y-a-i, Nina Niyai.

Currently, I am a student at the University of Montana.

In Japan we recently established an endangered species goal which is based on the Endangered Species Act in the United States. However, in the United States there is a movement to get rid of the ESA for economic reasons. It is surprising for me that the country which has started to protect endangered species is now trying to weaken the ESA. United States is a model for conservation around the world, even in Japan. I urge you to continue the ESA by utilizing the ESA.

Thank you for giving me a chance to speak out.

Senator BAUCUS. Thank you very much.

#### STATEMENT OF DAN BLOMQUIST, COLUMBIA FALLS, MT

Mr. BLOMQUIST. My name is Dan Blomquist. Unlike John, I only have one on in my name. I am from Columbia Falls, and I'd just like to give some observations from being here today and what I've seen.

A friend of mine, Roger Sullivan, who I guess you'd say would be on the other side of this issue, and I were talking out there earlier, and he said, Gee, this morning it reminded me of being on campus in the 1960s and the rallies, Hell, no, we won't go, and let's go to the peace march. We all laughed and had a good time.

I went and sat down and thought about it. He's exactly right. What happened in the 1960s. We sent our young people to Vietnam, over there for a war that we didn't know why for sure we were there to fight. Then we wouldn't let the people that knew how to do it do it. It became a political thing, a political solution, and it went back to Washington, D.C. for the management of the damn thing, and look what we got.

Today, we are in the same thing, man. We're trying to take it away from the people who have lived on the land, who know how to manage things and who know how to work with species, who know how to get the job done and turn it back over to a political decision.

Another thing that occurred to me was along the same line. For 150 years, the people of Montana—as one lady said here, we have

most of the species we started with here. If the people of Montana hadn't been managing this land effectively, we wouldn't have grizzly bears. We wouldn't have endangered species. We wouldn't have plants. We wouldn't have scenery. We wouldn't have any of this stuff here, and we wouldn't be here today.

I hear a lot about sound science today. Wonderful. I'm only 50 years old, and the things I've learned in my 50 years is that most things that are sound science have a lot of common sense, and I think we're lacking an awful lot of common sense in this equation. You know, it's just kind of being left out of the thing. Once again, we're not going back to the people that know how to do this thing.

Then, I got to thinking about road closures and the grizzly bear. There's a lot of talk about grizzly bear habitat degradation, you know, cramming more animals into a smaller area, taking away from them, increasing the stress on the animals and everything, and I thought about the victims. Who is the victim in this? All of a sudden I realized, I go to the mountains. I dearly love the mountains. That's my renewal. That's my space. I go up there. What do I find? I find a closed gate. I find reduced habitat, habitat degradation, increased stress in my life. Son of a gun. I must be an endangered species, and I'm damn sure I'm a victim.

Thank you.

Senator BAUCUS. Thank you, Dan, very much.

#### STATEMENT OF RICH DAY, MISSOULA, MT

Mr. DAY. Senator Baucus, my name is Rich Day. I'm from Missoula, Montana. I think one thought that came to my mind—

Senator BAUCUS. I've got an idea. Half the people on this side, go over to this side. We've got to mix this group together so you guys can talk to each other instead of one camp against the other.

Go ahead.

Mr. DAY. You're so fun to talk to, Max.

We're sitting here in this very hot room for a lot of hours talking about the Endangered Species Act. I heard a lot of rhetoric about the government is going to list a hundred species, 200 species, maybe hundreds of species. I think we sit and tend to forget why we're listing species, and it's because they are close to being endangered.

We have not done a good job of managing our wildlife and flora and fauna. The Endangered Species Act, for better or worse, is the emergency room for the flowers and plants and animals. That's what it's all about.

I think that one gentleman that spoke here earlier said that we need to manage our species in a very good condition. We should never get to the Endangered Species Act if we're doing our job right, if you're doing your job right, Max, and I applaud you for your efforts on the Endangered Species Act and where you're going with this. I hope you listen very carefully to the testimony and do well for Montana.

Thank you.

Senator BAUCUS. Thank you, Rich. Appreciate that.

### STATEMENT OF JAMES PETTIT

Mr. PETTIT. Good afternoon. My name is James Pettit. I am also a Montana native as well as a Native American and retired veteran from our armed forces.

I've got to say that during those 15 years this is not the same Montana that I left, and I'm very much ashamed that we've let it get to the state of affairs that it is. First of all, I can see the American dream is eroding by the conversations I've been hearing today. There's no incentive for private ownership anymore. Landowners are bearing the brunt of the tax burden for bills like this. Government doesn't own this country. The Federal Government doesn't, and it does not own the land within its borders. I asked you—one question I would like to have answered at the end of this is: Where in the Constitution does it give the Federal Government ownership of all land within its borders and the authority to supersede private owners—supersede their rights on their own privately owned land?

One of the things that's been happening is that we have to realize that people are still in charge of their government, and we've got to get the government back. The government was never set up to be in charge of the people, and we see that happening more and more. When we live in a country like ours, that's a republic, that means that everybody's individual rights are guaranteed. When you go along with a democracy, somebody's rights are going to be infringed. Even if the moral majority—the majority would happen to be immoral under democracy, they're going to set the tone for everything that's going to happen. That's what has happened here for too many years, especially in the current administration.

There have been an overwhelming number of bills and laws and things that's been enacted that's been totally against the majority, the conservative, well-meaning, patriotic people in this country, which has been totally ignored, and we're afraid that a lot of these things are being—you're entertaining us today because your voting record has definitely spoken for itself on major issues.

Montana should effect its own legislation and attend its own affairs and keep the Federal Government out, especially in terms of things that affect Montana. More money from the Federal Government means more government intervention, and in the current administration, when we're supposed to be trimming the fat and cutting down the government, this is just another great big, pork belly type program that's going to sock millions of taxpayers' dollars into what I would refer to as an environmental super fund that will be to no avail except to burden the taxpayers and well-meaning people in this country.

I could go on and on and echo a lot of sentiments of other conservatives and people that feel probably the same way, but I think a lot of us are sick and tired of this dog and pony show where you stack a panel with your kind of people, letting special interest people like Hank Fischer speak twice while keeping the open mike to the end so working folks have to leave to go to work while those attending our indoctrination centers, better known as the universities, and welfare recipients can hang around to speak, and that's exactly what happened here today.

Thank you.

Senator BAUCUS. Thank you.



## STATEMENT OF RUSS SCHNEIDER, GLACIER WILDERNESS GUIDES, HELENA, MT

Mr. SCHNEIDER. Thank you, Senator, for allowing me to speak. I'm here on behalf of the Glacier Wilderness Guides.

Senator BAUCUS. Your name, please?

Mr. SCHNEIDER. Russ Schneider.

Senator BAUCUS. Thank you.

Mr. SCHNEIDER. I was born and raised in Helena, Montana. I am currently employed by Glacier Wilderness Guides.

We would like to voice our support for the Endangered Species Act. It does benefit us economically. All day today I've heard about the Endangered Species Act and how it is negative economically. It cuts into us. It hurts us economically. But some businesses like our guide service do benefit from grizzlies, bald eagles and other wildlife that people want to see. We couldn't give as good of trips if we didn't have the aura of grizzly bears, the kind of added wilderness experience without grizzlies out there on our hikes.

I just wanted to voice some positive economic results of the Endangered Species Act. Thank you very much.

Senator BAUCUS. Thank you.

## STATEMENT OF DOUGLAS ASHE, CORVALLIS, MT

Mr. ASHE. Douglas Ashe from Corvallis, Montana.

I had kind of a form of what I was going to say, my own brand of rhetoric, but I've sat here for a few hours listening to a lot of rhetoric. Personally, I'm getting a little tired of it. It seems like there's two different camps here, just like you said a little while ago. You noticed the fact it's two different camps, and it's kind of sad, because on one side I keep hearing a lot people express an awful lot of fears, very well justified, very well-founded fears about just how the Endangered Species Act has hurt them and will continue to hurt them if it does not change for the better to be more responsible to the people of this country, and on other side I hear people, a lot of people, well-meaning people, and they believe they're right, and I believe in a lot of respects there are situations they are right. They believe these animals deserve to be protected.

I'm here to tell you, I'm a resource provider, and I made my entire living at that, and I know an awful lot of people that did the same, different branches of it in the same industry that I've been in. We're all tied to this land. What we've got to start realizing is that this problem has been created by some of the environmental laws and, most specifically, by the Endangered Species Act, is a problem where the government is not taking into consideration the people that have been hurt by this Act, by this law.

There's not one of us that wants to see any damage done to our environment. We don't want to see any species excluded. We don't want to see any species going extinct. We don't even want to see any species coming on the brink, but what we do want to see is responsible management. We want to be able to continue to provide the products that this country demands.

Each and every person in this room uses the products the resource based industries provide. If you cannot grow it, you have to mine it, and that is one simple statement that each and every person has to keep in mind. There is no product that you can use that

is either not grown by agriculture, by the timber industry or the product of the seas or it's mined or produced by the oil and gas and energy industries. Without these industries, we don't have a damn thing left in this country.

The Endangered Species Act and other laws like it are very often used as a vehicle to destroy these very industries that are the foundation of this Nation's wealth. Without responsible, reasonable consideration of these industries, this country is going to hit the ground. We can't let that happen.

Senator BAUCUS. Good statement. Thank you, Doug, very much.

#### **STATEMENT OF BRIAN PECK, ROCKY MOUNTAIN REGIONAL OFFICE, THE NATIONAL AUDUBON SOCIETY**

Mr. PECK. Brian Peck, Rocky Mountain Regional Office of the National Audubon Society.

Last week I was listening to national public radio when they interviewed the president of an international paper company in Alabama, and this man knew that he had three rare species on the company forests, and yet he had just invited Secretary Babbitt and the National Biological Survey onto the company forests to survey for threatened and endangered species. He commented, "If you know how to manage your land and you manage it well, you can have endangered species and still make a profit." He then pledged to alter the company's management if the survey showed it was necessary.

That's the kind of common sense cooperation that's needed, not the false choice of the jobs versus the environment. Somewhere we've been sold a bill of goods, I'm afraid, that our jobs, any of our jobs, can persist without a healthy environment. Nothing could be further from the truth. It's certainly true there is no gross national or domestic product in a destroyed environment.

There's no magic curtain out there in the Flathead separating our environment from their environment. If we're doing sufficient violence to them in their environment to exterminate them down to the last individual, how long before that environmental violence comes home to roost with us?

I would suggest we need a stronger ESA for sustainable environments and sustainable communities, and I think that Senate Bill 921 takes us a long way in that direction, and I would urge you, and Audubon would urge you, not to back up one single step.

I have just a moment, so I'll make a comment on the ESA being costly. The state of the art baggage system at the Denver International Airport cost six times what the entire Endangered Species Act cost for all species last year. Guess what? It doesn't work.

Thank you.

Senator BAUCUS. Thank you very much.

#### **STATEMENT OF KATE WRIGHT, YELLOWSTONE COALITION**

Ms. WRIGHT. My name is Kate Wright, and I am a member of the Yellowstone Coalition; I also am a participating member of the working group in Montana on the reauthorization, and I would like to clarify one thing that Dick Knox mentioned earlier about the grizzly bear at the end of his testimony. We have not discussed the

grizzly bear in that group, and his comments did not necessarily reflect how the whole group feels.

Senator BAUCUS. Okay.

Ms. WRIGHT. The second point I wanted to make is that I heard "harm" come up earlier, discussed, and what constitutes harm to a species, and you might consider that, if you had a grainfield and someone came and plowed it under or if you had a house and someone came and burned it, those would constitute harm, and so if you're talking about harm to a species habitat, that does constitute harm to that individual species.

The final point that I'd like to make is one we've heard about candidate species. That is, we're trying to keep—the ultimate goal of the Endangered Species Act is to keep species from becoming listed, and I heard you say earlier that the goal was to delist species, and I think it's really important to keep in perspective why the Endangered Species Act came to be. It was to protect our biological heritage and to keep our species, the things we depend on for our resources, for our medicines, our daily—the items we use in our daily lives. It is to protect those, and that's why I ask that you sponsor a bill and continue to support a strong Endangered Species Act.

Thank you.

Senator BAUCUS. Thanks, Kate.

#### STATEMENT OF ED BLACKLER, BIGFORK, MT

Mr. BLACKLER. I'm Ed Blackler from Bigfork. I'd like to thank you for the opportunity to speak, and although my input probably won't be that much different than the things you've already heard, since I spent all day here in this hot gym, I'm damned if I won't say it.

I feel that the most important consideration to make while deliberating about the reauthorization of the Endangered Species Act is how reasonably it will be interpreted on a case-by-case basis. Some middle ground must be found in this process. When various agency interpretations are made, consideration must be given to all facets, not just purely the scientific aspect.

The present as well as the future ramifications of recreational and economic opportunities must be carefully weighed. The Endangered Species Act was conceived by man, and it needs to be monitored and adapted from time to time so as to continue to meet the needs of man.

Thank you, again, for this opportunity to have input in this.

Senator BAUCUS. Thank you.

#### STATEMENT OF MR. PAT CHADLERS, MARATHON OIL COMPANY/WRPC, CODY, WY

Mr. CHADLERS. My name is Pat Chadlers. I am a resident of Cody, Wyoming. I'm an employee of the Marathon Oil Company and representing the WRPC. WRPC represents several thousand people involved in timber, mining, oil and gas, ranching, farming and recreation in the State.

The Endangered Species Act is an act that must be revised or amended. In other States, industries and people anticipating to make a living both on public and private lands have been unrea-



sonably restricted or denied access to the public lands and the property.

I have a few cases here, but I really don't want to read them since I don't have time, but some of the suggested changes—while the recently released joint policy directive outlined by Secretary Babbitt and Under Secretary Baker is a step in the right direction, additional suggested changes are as follows: Listing process. Criteria and standards should be established to determine what constitutes best available scientific and commercial data. Negatively affected parties should have similar rights to the petitioner that requests a species listing in challenging, legally challenging a listing decision.

Critical habitat clearly defined, defined critical habitat. Identify that habitat when the species is listed or no later than 12 months after the listing. Harm or harassment. This should be listed as harm or destruction. Light changes to the habitat of that species must not be considered a justifiable basis for a take.

Recovery plans. Complete draft recovery plans within 12 months of listing, allow for public review. Final recovery plans should be completed within 18 months of listing. Consultation. This process should be streamlined to be completed within a maximum of 45 days.

I have some others, but I've previously submitted testimony.

Thank you, Max.

Senator BAUCUS. Thank you.

#### STATEMENT OF SAM HARVEY, BOZEMAN, MT

Mr. HARVEY. My name is Sam Harvey from Bozeman, Montana. I know where they got the advertisement now that says, I took a shower with Dial. Don't you wish everyone did?

But people in this room, we all share two common goals. We all love wild animals. We all love species, but we in Montana are victims, I guess, of this Endangered Species Act. You say you can't think of anybody that's a victim. We're a victim of this Endangered Species Act because of land use.

We snowmobiled for years in and around Yellowstone National Park. The grizzly bear has gained prominence there. It should be delisted, but still they keep raising the limits on this listing.

So, Senator Baucus, after we took you snowmobiling in and around the Bozeman area, we could call you almost a snowmobiler, but you should hurry and come back to Bozeman because, if you don't, you're not going to have that area in the Gallatin Range, not because of the wilderness designation, but, with the economy and all these other things, you're going to see that snowmobiling area taken away because of this Endangered Species Act and this grizzly bear recovery plan. All of our snowmobiling in and around the Gallatin National Forest and in the Beaverhead National Forest has to do with this grizzly recovery plan, but that's only one species. That's not this list of species they have in the background waiting for listing.

What we're asking of you is, you have to keep in mind the uses that have occurred in that area and continue to occur in that area, even though this species is an endangered one. So, basically, what

we're asking you to keep in mind is that people are in this equation.

This is not part of my testimony, which part I've given you here. I've submitted written testimony, and I thank you for the opportunity to testify before this Senate committee.

This is the second one I've had to testify before, and the other one was in Washington, D.C. in 1988, and I wished this lady who was involved in our public land use had to have been able to continue in it, because all I do is get frustrated and mad as hell at this process trying to deal with politicians over the Endangered Species Act, wilderness designations, grizzly bear recovery and so on and so on and so on.

Thank you.

Senator BAUCUS. Thank you.

### STATEMENT OF CHARLOTTE BRUHM, LIBBY, MT

Ms. BRUHM. I'm Charlotte Bruhm, B-r-u-h-m, and I'm from Libby, Montana.

As far as I'm concerned, the ESA as it stands today has spawned a bureaucracy of epidemic proportions with ramifications akin to the gold boom with a totally myopic vision toward economic factors and human rights. I'm going to stop right here, because this subject has been beaten to death today, so I'm not going to go any further.

I do want to give an example of the ramifications I'm alluding to here, and it has to do with the Clean Water Act. Living in Libby, which is a beautiful, small American community in Lincoln County, the residents of Lincoln County and Sanders County are aware—and I'm sure you yourself, Senator, are very well aware—that a very reputable mining company has been trying for years to get a mining operation started about 20 miles south of Libby, and with all the obstacles that must be overcome, environmental litigation and what have you, right now they might be looking at around the year 2005 before they get started, and once it's started it will give between 450 and 500 jobs to people for about 16 years or so.

A couple of years ago, in the process of drilling the adit, or whatever it is—I'm not an expert on mines—a couple of nitrates leaked into the Libby Creek, and, of course, it immediately created an uproar. Goodness, the dreaded nitrates. Tests were ordered, and lo and behold, the nitrates that leaked into Libby Creek, because it is such a pure creek, actually would have enhanced aquatic plant and fish life. Even with the nitrates in Libby Creek, it was still above and beyond the drinking water standard in the City of Libby, but none of that mattered.

What happened is that 65 people that worked there at the time lost their jobs two days before Thanksgiving, and this is a couple years ago.

Now, I would consider this a definite example of very harmful to the human species, you know. I mean, I am definitely for a responsible stewardship of our environment, but just like a broken record here, the message has to be driven home, that balance, logic and rationale has to be restored to all of these people.

I have a real problem with this. Maybe somebody can explain this. All these people that are claiming forever these dire predictions of extinctions happening with the wolves, with the salmon

and with the bear, I guess they haven't heard of Canada. It still means our kids could see these animals in other places. So to me the word of "extinction" is not really a true word because extinction means gone from everyone, like the dinosaurs, but we still have plenty of these species around, so I think the scare tactics of trying to ram it down our throats with all of this extinction, extinction, extinction is a little bit extreme.

Senator BAUCUS. Thank you, Charlotte.

Ms. BRUHM. I rest my case.

Senator BAUCUS. Thank you.

#### STATEMENT OF HILARY FUNK, WHITEFISH, MT

Ms. FUNK. My name is Hilary Funk and I'm from Whitefish, Montana. I was born in St. Ignatius and lived in Bigfork until I moved to Whitefish last year.

The woodland caribou used to roam the plains of Northern Montana, Northern Idaho and North Dakota. Due to excessive road building, deforestation of our old growth stands and declining food source in the winter and poaching, these caribou are only left in Northern Idaho. What a sad thought it is to think this animal may become nonexistent, not one left to reproduce itself.

Could you imagine if you'd been driven out of your home so that the entire human race was on the brink of extinction? It's a pretty scary thought, but many species now are having to go through that same trauma themselves. Sometimes you don't quite know what you have until it's totally gone.

Thank you.

Senator BAUCUS. Thank you, Hilary.

#### STATEMENT OF LEANNE WELCH, BOZEMAN, MT

Ms. WELCH. Senator Baucus, I am Leanne Welch. I'm from Bozeman, Montana, but I'm originally from South Carolina. I'm doing the fellowship of the political research center for the summer. It's a think tank that has marketable approaches and private property rights. I consider myself to be an environmentalist. I have a degree in biology.

I agree that these extinctions are going on, but I also agree—I also think that I believe in the Constitution and the Fifth Amendment, and I think that the ESA is a land use regulation that is taking away private property rights, and I know I must—that was emphasized today also.

I'd like to talk about a specific case in North Carolina that I'm working on this summer. A man by the name of Ben Kohn in North Carolina had about 1500 acres of his land taken because of the red woodpecker. It was worth about \$2.2 million. That's a lot of money. One dollar is a lot of money to me because I'm a college student.

You know, I don't see the ESA is working. There are a lot of perceived incentives in the Act, and Mr. Kohn, instead he's clear-cutting around this take. How does that save species? He's clear-cutting around it. I see in your bill that you have incentives. I agree with that. I think that's a good idea, but I also think you should emphasize compensation. That's the most important thing you should emphasize.



There are monies in the land and water conservation fund for acquisition, but they're not being used by the Fish and Wildlife Service for acquisition for important species, like the red-cockaded woodpecker. I agree it's an endangered species, but you don't need to take land from private landowners to save it.

The Federal Government and environmental groups want to save it, and people like me, we should have to pay. So far, we've only invoked regulations on individual private landowners, and I don't think that's right. Anything you can do to help me out and Mr. Kohn out, I would really appreciate that.

Thanks.

Senator BAUCUS. Thank you, Leanne.

### STATEMENT OF TOM ELLSWORTH, WHITEFISH, MT

Mr. ELLSWORTH. My name is Tom Ellsworth. I live in Whitefish, and I feel it's truly fortunate that I came today to be with all of you and you, Senator Baucus.

What we have here is a true gift. We have a beautiful State to live in. We have many things here that don't exist in other parts of the country anymore, and I feel, in a spiritual experience, this is really important to this area and to each and every one of us, no matter what our jobs are.

We live in what I think is probably the wealthiest Nation on the earth. If we can't find the money to endorse and strengthen bills that allow us to keep what we've been given as a gift, this land, then we have a problem. In terms of jobs and in terms of victims and in terms of starvation, if, in the wealthiest country on the earth, we can't find solutions without ending the existence of our natural gifts to an area, then we seriously have problems.

I thank you, Senator Baucus, for helping us strengthen this bill.

Senator BAUCUS. Thank you, Tom, very much. Thank you.

### STATEMENT OF RANDY LAMFHERE

Mr. LAMFHERE. Senator, my name is Randy Lamfhere, L-a-m-f-h-e-r-e.

The first thing I'd like to say is, a lot of us people here make our living from the land. It's hard for us to come up against the Sierra Club and people like that. They're kind of hired guns, and we don't have the education to speak that well.

One of the things I keep hearing is money. It seems like almost every environmentalist and almost every government official thinks that the cure for every problem is pouring Federal money into it, and the problem I've got with that is, if we keep squandering our money on these things everybody wants to pour money into, our taxes get higher and higher and higher, and you're going to kill the source of the taxes, and that's our taxpayers. We can't afford it anymore.

Myself, I've worked basically my whole life. My living has come from the land one way or the other. I used to cut Christmas trees and sell them. Anyhow, we used to do it, I thought, kind of scientifically. We cut trees, properly spaced them. When we got done, the woods were in better shape than when we went in there. The other trees were left with a chance to grow and live.

The roads are closed now, and we can't do it anymore. The gates are across us. They won't open the gates and let us in to cut trees.

I've also got some small mining claims. I'm afraid to touch the things because I know some good environmentalist is going to come out and file a lawsuit against me. I can't afford it. Thousands of us can't afford it.

One thing you should know is that, for myself and many of the others here in the West, the forests are our livelihood, and we're basically being destroyed. That's the only way you can look at it, and we're being pushed right up against the wall. We really need some good common sense to prevail, and, actually, we want the American dream for ourselves.

I may just change the subject a little bit. I'm going to. One thing that galls us here locally—I noticed one gentleman, some kind of director from California Fish and Game at one time who lived and moved to Montana and is now director of some wilderness-something or other. It bothers us these guys from California are coming in here. They screwed up their own State. Now they're coming to Montana and want to screw it up for us. It kind of rubs our feathers the wrong direction.

Senator BAUCUS. Thank you, Randy.

#### STATEMENT OF MICHELLE RICHARDS

Ms. RICHARDS. Michelle Richards. I worked in Glacier National Park for a season for three years on different wildlife projects. All have involved endangered species.

Obviously, wildlife is very important to me. I would say it's the single most important reason why I've chosen to live out here and why I've chosen that occupation, and you couldn't put a dollar value on what wildlife means to me.

The Endangered Species Act has basically created most of my jobs that I've had in Montana, and I'm sure a lot of others in the wildlife biology field. I don't have any doubt that Americans or American families will not survive even if they are impacted at least sometimes by the Endangered Species Act, and I have every doubt that particular species may not survive without a strong Endangered Species Act.

Also, I believe if there is, in fact, a war going on here, it's a war against wildlife that we are waging against the original inhabitants of this area and this land and that we are the ones with all the power and control here, and they are up against the wall, and we have the power to help them continue to survive or destroy them completely forever, and I don't know how we could do that with a clear conscience.

Thank you.

Senator BAUCUS. Thank you, Michelle.

#### STATEMENT OF SHEILA KELLER, KALISPELL, MT

Ms. KELLER. My name is Sheila Keller. I'm from Kalispell, Montana.

In Kalispell in January, Dr. Chris Servheen said that the grizzly bear was recovered, that it was ready for delisting and that he had no problem with timber harvests in bear habitat. Yet, preservation groups have succeeded in bringing timber harvests of the Flathead

National Forest to a complete halt using the Endangered Species Act as their vehicle.

It's been said this is only a temporary thing, 10, 20 or 30 years. As a small business owner, my family and the two families that we support through our business don't survive that long without a job, and my home is at risk. The beauty of our forests we have today are here because of human management. It's been management.

Nature is a very harsh manager. We've already forgotten the fires of Yellowstone. The last major fires in this area were in 1910 when three million acres burned from the east end of Coeur d'Alene Lake to Glacier Park south into the Clearwater Forests of Missoula. Three million acres. If anyone doubts the destruction of these fires, there's a book called *The Great Burn* that documents that fire with pictures and newspaper articles.

The people of that time were determined that that destruction would never happen again, so we have been putting out forest fires since then and managing our forests so we have more old growth, more trees. Wildlife numbers are at their highest because we have been managing our forests.

Now, the Flathead National Forest, more than 70 percent of it is wilderness designation or wild and scenic rivers. Less than 30 percent is in the timber base. Only 6 percent of that, according to Joe Holmstrom, has been logged in the last 40 years.

The forests we have today are here because they are managed, and when we take man out of the picture, nature will again manage the forests, and the forests that you love so much today will not be here in the way you want to see them.

Thank you.

Senator BAUCUS. Thank you, Sheila.

#### **STATEMENT OF SARAH COBBLER, KALISPELL, MT**

Ms. COBBLER. My name is Sarah Cobbler. I'm from Kalispell.

I also noted today that there's seemingly a war going on, and it's a big theme that we've seen today, and I've heard in my education war is an act of violence in which one party attacks another in an effort to destroy and put down their effort.

I think the first step in conquering any problem is realizing that war is not necessary and that there are many alternatives. We need to also realize that people may perceive war when there is none. For example, in the 1950s, half the Nation was convinced that Communists were taking over the country, and, in fact, the country turned on itself. This action caused political strife, loss of jobs and many innocent people being accused falsely.

This type of McCarthyism is happening today. There is no war. People are banding together to speak for those who can't speak for themselves, the grey wolf, grizzly and other animals who are near extinction. If we continue acting like there is a war going on, nothing will ever be resolved.

As a Nation of one people, we should strive to protect every aspect of America, the pristine mountain acres, the pristine lakes and rivers, economic prowess and, especially, the future of our children. This is why I believe we should support the increase of the bill we have today, because it's important to our future that we have pro-



tection of our animals. It's not going to happen by itself, and we've gone too far to turn back now.

Senator BAUCUS. Thank you, Sarah.

### STATEMENT OF CHARLES GASH, MISSOULA, MT

Mr. GASH. Hello, Mr. Chairman. My name is Charles Gash. I live in Missoula, and it seems that a lot of people that have been talking seem to put the wilderness, the Endangered Species Act versus jobs, and it's an either/or thing. I think Congress, in a lot of things they're doing, are trying to take that either/or situation out and trying to reach some kind of compromise, and to that end I was wondering if there is anything before Congress now to initiate jobs and habitat rehabilitation to counter some of the jobs being lost in this area.

Also, I was wondering if there was—canvassing seems to be pretty popular with yourselves and insurance salesmen. Today, you heard a lot of rhetoric, a lot of things that were accurate, a lot of things that were not. I was wondering if Congress has funds to hire people to canvass the area to break the myths that the grizzly is destroying 250 million head of cattle in Montana or, on the opposite side, that the environmentalists are responsible for losing most of the jobs up through here. I think it's the lack of any other type of job, not the environmental sector or the sound science evidence.

I was also wondering if we could—if the government, like they did for Chrysler in the early 1980s—they trusted Chrysler to pay them back. They signed a bill, or they gave them credit, in other words. I was wondering if we couldn't be given some credit and some capital by just simply signing a bill over in Congress that would help some of these people around here with some much-needed capital and credit to start some new businesses, to try and come up with some kind of alternative instead of either dishing the entire—none of these wilderness bills are in favor of jobs. Why not try to stimulate capital and stimulate some kind of growth?

Finally, you see a lot of large corporations. It amazes me some of these out-of-work employees are so in favor of the large companies that would come in, work for 10 or 20 years and completely leave without setting up any kind of trust funds to help ease some of the economic impact if they're leaving.

That's a few ideas I came up with today.

Senator BAUCUS. Thank you.

To answer your question, many millions of dollars are spent for economic development as a consequence of the plan, and trying to find a solution to the old growth forests in the Pacific Northwest for all habitat has been cut back. We're trying to get through Congress an economic development act for jobs. We don't have an unlimited number of dollars, and you're also right, in my judgement, that 9 times out of 10 it's not either/or, but, rather, it's just to try to find some resolution here in dollars to help make sense. Maybe it's a way to apply the dollars that were spent in the Pacific Northwest to other Endangered Species Act results as well. That's a good point. We'll look at that. I appreciate that. Thank you.

### STATEMENT OF COLIN MALONE, BIGFORK, MT

Mr. MALONE. Colin Malone. I'm a blacksmith from Bigfork. I've made my living over the last few years shoeing and guiding up in the mountains, and I'd like to just say that without these animals this wouldn't be Montana. It's what separates us from the other mountain States, as far as I'm concerned. It's what really makes us unique in this range.

This lady made a point that bears in—and wolves are not extinct up in Canada or Alaska. I don't live up there, and I really like this region here, and I'd like to see it stay the way it is. My friends that wear the yellow shirts like that are going to give me a hard time.

I'd also like to say that it's something that's there. It's something you're going to have to think about as far as if there's compensation that can be given if there is—if a rancher does lose some stock or something, but I think it's important that the animals are kept intact, that the bears and wolves are introduced into this area and kept there. Without them, it's gone.

Senator BAUCUS. Thank you, Colin, very much. Thank you. Appreciate it.

### STATEMENT OF JACK HINKLE, BIGFORK, MT

Mr. HINKLE. My name is Jack Hinkle, and I'm from Bigfork, Montana.

Senator I'd like to read to you from a letter I drafted you last night. Otherwise, I get too long-winded.

Next month I will be 65 and have been involved in the environment and conservation issues since I was in my mid-20s. I've hunted and fished since I was 14. My first trip into the Bob Marshall Wilderness was in 1950. I stayed in camp two, two and a half months without coming out. I have been back in a number of times since. So much for my credentials. Now for the purpose of this letter.

We definitely need clean water, clean air and to properly manage our fish and wildlife. The management of fish and wildlife resources is a huge success story thanks to the sportsmen and their dollars as well as the excellent job done by the Federal and State wildlife agencies.

The Endangered Species Act, as it was written, was supposed to be a tool to help in this effort. It is to the contrary. Anyone through the courts can create expensive litigation that is eating up Fish and Wildlife, Forest Service and BLM funds in costly legal fees. It is time we stop all this bickering and start once again to manage our natural resources. This includes hunting and fishing for the species that can withstand the harvest.

The grizzly bear is a good example of over-reaction. Here in Montana there are more now than there was four or five years ago. Now we have half the Forest Service roads closed, no hunting, lots of problem bears, all kinds of restrictions and too much money being spent studying them, not to mention legal fees. Next it will be mountain lions and wolves. The Endangered Species Act, it is being misused to the detriment of the residents of Montana. It should be left to die or at least amended so it would not affect private property.

We cannot live in the past, only at the present, and we must plan for the future. As our human population increases, we must sacrifice some of the things of the past. We may lose some pieces, but this is evolution.

I thank you for this opportunity to be here. From what I see, you've done—I wasn't aware of this. Now, I may not have put this in. I may not have made some of those comments.

Thank you.

Senator BAUCUS. I appreciate that, Jack.

#### STATEMENT OF ADAM REUBEN, KALISPELL, MT

Mr. REUBEN. My name is Adam Reuben, and I'm from up in Kalispell.

Senator Baucus, I'd like you to think back to a speech you gave to the floor of the Senate a couple months back. It was an excellent speech that dealt with a takings amendment. It was attached to some completely unrelated piece of legislation, the Export Administration Act or something like that, and in your speech you correctly pointed out that takings legislation is a thinly disguised effort to hinder our ability to protect the environment and workers' safety and civil rights, and I—as you know, no Federal court has ever found the Endangered Species Act to have caused the taking of private property because the restrictions that it puts on are for the public benefit.

Certainly there are moral and philosophical arguments that are protecting endangered species and wildlife, but there are very different benefits to people. So I would like to thank you for your leadership in the past and opposing takings legislation.

These amendments come up on just about every bill that goes through, from the Export Administration Act to Safe Drinking Water. I understand there's supposed to be another one on Appropriations.

I urge you to continue your opposing misguided legislation, to continue your strong leadership on 921 and to support strengthening amendments by the conservation community.

Senator BAUCUS. Thank you, Adam.

#### STATEMENT OF JIM ROGERS, POLSON/RONAN, MT

Mr. ROGERS. I am Jim Rogers. I am a schoolteacher up the road here in Polson. This is my school, too, Ronan.

I want to relate one of my strongest memories back to when I was in grade school of a report that I did on extinct birds. At that time I wrote about a variety of birds, including the wild woodpeckers and, probably most noteworthy, the passenger pigeon, which was perhaps the most numerous bird that lived here in North America. Later on, a year or so later, on another school trip to Washington, D.C., that report became a harsh reality when I encountered, in a lonely, dusty corner in the Smithsonian, that—I met, nose-to-beak, if you will, the passenger pigeon, who had died out in 1914. I apologize for that kind of fowl joke.

As a science teacher—and I think largely in thanks to the Endangered Species Act—my students can write about and, even more importantly, view the successful efforts that we have accomplished in protecting and saving certain species, like the bald eagle,



peregrine falcon, the osprey that's really abundant around here, and I think that's a lot nicer situation than my students concentrating on the dismal failures that have been so characteristic in the past.

A lot of people have mentioned about—talked about putting people back into the equation, and that's exactly what I'd like you to do by doing everything you can to strengthen the Endangered Species Act for our children and for our children's children.

Thank you.

Senator BAUCUS. Thank you very much.

#### STATEMENT OF THOMPSON SMITH, RONAN, MT

Mr. SMITH. My name is Thompson Smith. I live about six miles south of here, and so this hearing is of particular interest to me, also because I've been working for about six years pretty intensively on a dissertation on the environmental history of this area.

You know, the fact that you're holding this hearing here in the center of the Flathead is particularly interesting to me, because I think about when the reservation was established less than a century and a half ago and the incredible environmental changes that have occurred during that period of time and the acts of white travelers at that time on the tremendous natural abundance in this region from the early to the mid-19th century, although by then it was already starting to decline in some ways. The most remarkable thing is that those early white travelers were viewing a landscape that had already been inhabited for about 10,000 years.

It's clear there's something to learn. It's possible to live in a relationship with the environment that does not produce a constant environmental decline, and that's the idea that's held by the ESA, and I really applaud your efforts to reauthorize and strengthen it, particularly with the inclusion of ecosystem protection, which I think has been far too weak in the ESA up until now.

I also wanted to comment briefly on some of the points raised by the anti-ESA folks today who have said several points. One of them was that they didn't favor the extinction of any animal. Another was they felt there was too much government regulation to protect those animals. The third was that they thought that the kind of laissez-faire approach of unregulated private property and market forces would take care of the environment on its own. This clearly flies in the face of the environmental history of Montana and much of the rest of the west. You only have to go back to the history of the Anaconda Mining Company and the origins of the largest Super Fund site in the United States to see that an unregulated market, corporate force in the State will do nothing but lead to unmitigated environmental problems, and I think the ESA can only begin to get at this problem. That is, the economic system that we have in this country is—continues to be founded on the assumption of definite growth, and, in fact, its health continues to be measured by the rate in which it's growing. This doesn't accord very well with the limits of a finite environment, and sooner or later that's the basic problem we're going to be forced to address.

Senator BAUCUS. Thank you, Thompson.

Mr. SMITH. I think the ESA could be a vehicle toward a more sustainable society.

Senator BAUCUS. Thank you, Thompson.

### STATEMENT OF GREG HAAS, CORVALLIS, MT

Mr. HAAS. Greg Haas from Corvallis.

I'm up here because I don't understand how anybody can put the life of an animal over the lives of humans. Take the spotted owl, for instance. If people have—numerous people, hundreds of people have lost their jobs because of the spotted owl in the forests. You can log the forests around the owls. Is the spotted owl supposed to be there? Is this their natural range? From what I've heard, their natural range is up in Canada, not down here. They're not supposed to be here, and—so why stop the logging for a pair that's not supposed to be here anyways.

That's all I have to say.

Senator BAUCUS. Okay. Thank you, Greg.

### STATEMENT OF MR. JESSE LEARY, TREGO, MT

Mr. LEARY. My name is Jesse Leary. I come from—I hail from up around Trego, Montana. My dad homesteaded there in 1910, and now I'm residing in Helena, out in the valley.

I get my reports off of my computer. I was fortunate enough to learn how to operate one.

I have two questions or two things. One is, they talk about the salmon on the Columbia River, which I know quite a bit about. I worked on seven dams on the Columbia River from Grand Coulee down. There is one dam we called the Wells Dam there that has a fish ladder on it. In fact, it's the last fish ladder that goes up the Columbia River.

In that particular dam, they incorporated a hatchery, and in that hatchery, they were supposed to put out twice the number of salmon that goes up through Rocky Rove there. They were supposed to—this was in the mandate when they built the dam, that they had to do this.

I have yet to hear any conversation, in the listing of the salmon, about this hatchery or about any other hatchery that's down the river. I know these exist because I helped build those dams, and if they really wanted to do a little more about the salmon, I think that they could put a ladder in Chief Joe Dam and put a ladder in Grand Coulee, the biggest dam in the world today. I guess when that dam was built in South America it will be the biggest, but at the present time, Grand Coulee is the biggest one. I spent 13 years building the third powerhouse on it. I am retired now, so I can't do much.

My second deal is that, I am a playful miner. I mine for gold up around Philipsburg. I keep the environmentalists kind of busy because I figure, as long as they're picking on me, they're not picking on somebody else.

The Forest Service has been very good to us and he tells us we have a model mining operation, and we did have one over in Superior. We made an adit, and that's where we cut into the rock, and this woman environmentalist called and said she wanted to take a water sample and she would meet me at that time. I was living in Washington, and I said okay.

We start in the mine adit, and she got these buckets, and I said, What are you going to do?

I'm going to take some samples.

I said, No samples. No. I said, In that letter it said you wanted water samples, and I told you the water coming out of that adit was purer than the water that was in cedar bed.

We don't believe that, she said.

I said, Well, take my word for it, or test it yourself, but you're not going to take any samples because that's none of your business. I said, If you take any samples, I'm going to go up here to a hot spot, and I'm going to take a sample and take it down and get it assayed and put it in the paper and send it to San Francisco and LA and Seattle and New York if I have to tell them where I got it and tell them there's lots of land here that can be taken up around where I am in the mine.

She thought a few minutes. She said, I will not take any samples. She said, I get your drift.

So I'd like to leave that comment with you. If you can't—if you can't grow it, you've got to mine it, no matter what you have on this earth. As Mr. Babbitt said, I don't want your input, when I told him that.

Senator BAUCUS. Thank you, Jesse.

#### STATEMENT OF BRIAN GAY, MISSOULA, MT

Mr. GAY. My name is Brian Gay. I'm a biologist from Missoula.

I'd like to talk about the sound scientific section and the private landowner conservation. The type of biology that supports the ESA is not patently anti-community. Communities here will continue to need the wildlife and, in many ways, the more important secondary effect of forests and range conservation. Conservation biology and anti-take is not anti-community. Private land conservation support is simply the proper direction to face, and I support your strengthening of the ESA.

Private land conservation utilizes the very people who believe the government is weighing them in restrictions. It gives them a positive outlook. With appropriate education about what the scientific eggheads, quote, unquote, "are attempting to get across," these two groups would likely find surprising common ground.

I've lived for several years in areas that 500 years of total concentration on human and economic growth have utterly demoted local forests and wiped out species. These areas have an extremely dismal quality of life. It is important that, though there are differing viewpoints, we will continue to stall if we don't help ourselves sustain the land we depend upon. Most of us don't have a clear idea what is happening to our own forest, water and wildlife, truly. We need to open up, or we will approach the deforested areas much like the Third World countries.

Today, The Missoulian noted that an aquatic plant has just been listed as threatened, the water howelia [phonetic], from logging, grazing and home building.

I support your Bill 921 and, particularly, the private land and conservation section of it.

Senator BAUCUS. Thank you, Brian, I appreciate that.



## STATEMENT OF JEREMY CLINTON, MISSOULA, MT

Mr. CLINTON. My name is Jeremy Clinton. I'm from Missoula. I'm here today representing the Montana Public Interest Research Group, a non-profit, non-partisan research and advocacy research organization located on the University of Montana campus. It represents 25 student members and 1500 community members State-wide.

However, as a third generation Montanan with great affinity for the land I was raised on, I have a deep, personal concern for the issue of species protection as well. I support a strengthened Endangered Species Act because I know that a balanced ecosystem supporting a wide array of plants and animal life is necessary for a healthy planet, and a healthy planet is necessary for human happiness and prosperity.

I have heard the concerns of those who feel that the ESA is damaging, and I sympathize with their fears that it will deprive them of their livelihood. However, it has been my experience that anyone who doesn't believe that threatened or endangered species must be protected is acting out of either ignorance in their own place in nature or the selfish belief that their own needs are more important than another being.

With a world population of over 6 billion individuals it is obvious humans have no troubles of their own with survival. This massive population expansion has come at the expense of our life on the planet, however, which in turn affects our surroundings and, therefore, our very existence. As species quietly pass away, we may at first may not notice they're gone, but we will feel the loss eventually. It is for this reason we must not think of ourselves but, rather, think of the safety and welfare of other creatures who share our planet and, in doing so, improve the quality of our lives. This may be difficult at first, but I assure you it will be well worth it for us and in the future.

Please continue to support 921 as necessary legislation for Montana and the Nation, but also accept the conservation amendments to the bill which will protect our true natural resources, our wildlife.

Senator BAUCUS. Thank you, Jeremy.

## STATEMENT OF BECKY DINWITTY, SEATTLE, WA

Ms. DINWITTY. Hi, my name is Becky Dinwitty, and I'm from Seattle.

Don't worry, everybody from Montana. I'm not going to move here. This is the only hearing west of the Mississippi. I didn't want to miss it.

I have heard a lot of talk today about grizzlies and wolves and fish and larger species, and I think those are all critical. I have heard fewer comments about plants and other species that are less sexy and stuff like that, and I just wanted to speak about that for a moment, about the medicinal values of a lot of these species, plant species.

This came to my mind particularly because I feel—like I've heard people dismissing certain species. Like a gentleman earlier mentioned a snail. You know, what's the use of a snail? Well, 40 percent of all prescription medicines sold in the United States contain

at least one compound originally derived from a plant, and there are also other animal species that provide medicines.

The value of such medicines was estimated in 1984 to be more than \$20 billion so that's obviously an important part of our economy. Some of these medicines are famous, like Taxol from the yew tree which is used in the treatment of ovarian and other types of cancers. Another one is Digitalis from the purple foxglove, which is used to treat heart disease, and other species and other medicines are less well-known.

You know, at this point, according to our Harvard biologist, Yale Wilson, we're losing up to a hundred species per day. This is the largest rate of extinction in the history of the planet, and it's far beyond the natural rate of extinction that biological things go to extinction.

Thomas Eisner, who is the director of the Cornell Institute for Research and Chemical Ecology, said the chemical treasury of nature is literally disappearing before we've had a chance to assess it. We can't afford in the years ahead to be deprived of the inventions of nature. Chemicals like Taxol could not have been designed by human ingenuity. It was totally unforeseen in chemical structure and therapeutic action.

I think we need to take a moment and, I guess, question our arrogance at deciding which species are important and which are not. I think they're all critical, and we need to keep that in mind.

Senator I think you've got a great bill going. I fully support you, and so do a lot of people out in the Pacific Northwest.

Senator BAUCUS. Thank you, Becky. You make an interesting point about drugs. The pharmaceutical industry is stampeding, down to the Amazon forests because they know that many of the new drugs they will be able to develop and synthesize in the future are derived from and based on a lot of these species, particularly plants. I don't understand how this works, but plants are the basis for a lot of drugs. Aspirin, for example, is based from a species which is either extinct or about to be extinct. It's amazing the number of drugs that have come from various plants. That's true.

Thank you.

#### STATEMENT OF LILA PERJEAU, RONAN, MT

Ms. PERJEAU. Good afternoon.

Senator BAUCUS. Name, please.

Ms. PERJEAU. Lila Perjeau.

Senator BAUCUS. Lila?

Ms. PERJEAU. Right. Perjeau.

Just a case in point. I live here in the valley, and we have confrontations and—yes, confrontations of bears every day. Problem bears end up extinct. The other bears that roam naturally and do not cause a problem are let go.

Case in point. I have a bear in my freezer right now that tastes wonderful, and I have a bear in the backyard that we watch. The grizzly sow that is there is and has been in the valley for a couple of months now. She hasn't caused any problem, and we have managed not to have any confrontations with her to where I don't feel that we need a stronger—a stronger law to let us manage the wildlife that we've got.

Thank you.

Senator BAUCUS. Thank you, Lila.

### STATEMENT OF BOB BELL, RONAN, MT

Mr. BELL. Bob Bell, here in Ronan.

We've heard a lot about the grizzly bear today. One question I'd like to know is: How come everybody can go into the woods with no grizzly bear confrontations except for the logger? I've looked. Since 1981, looking over the grizzly bear study, there's never been a grizzly bear killed because he was harassing a logger, but in Glacier Park, where the bear is strictly protected, there's been quite a few killed there.

They keep talking about road death to grizzly bear. There's one documented grizzly bear death on the road, and that was a logging road named Going to the Sun Highway, and that's the only documented death.

We can live with the grizzly bear whether we're a logger or packer. We can all get together. We've done it all our lives, and we're not killing them just because we're logging.

Thank you.

Senator BAUCUS. Thank you, Bob.

### STATEMENT OF RUPERT SHINER, TREGO, MT

Mr. SHINER. Rupert Shiner from Trego, Montana. I've lived there for quite a few years. Wild—I spend six weeks out there every fall.

You've got to put people first. That's all there is to it. If somehow one of our animals slips and gets endangered and falls by the way-side, that's the way it has to be. People have to be looked at first.

Senator BAUCUS. Thank you, Rupert.

### STATEMENT OF SUSAN LAKE, RONAN, MT

Ms. LAKE. Susan Lake. You just haven't heard from no farmers today. I think you only heard from one lady from the Farm Bureau.

We farm here in Ronan.

You haven't heard from very many Ronan people either, but we are—we raise potatoes, and we are impacted by the Endangered Species Act. We are impacted when our electricity goes up because the rivers have to let more water by. We're impacted all the time, and I know that we will work with the Environmental Species Act, and I think that working with the forest people and with the farm people and the people that are really here on the land is the best thing you can do, and I think—I see that you put that in the bill, that you are going to start working with us, because I think—from a practical standpoint, I think we understand things a lot better.

I appreciate the environmentalists spend a lot of money and investigate and enjoy our wildlife. This is a really silly idea, but you look at Montana. If you want to keep it the way it is, everybody should just pass through it, and they shouldn't stop. They shouldn't be finding a pretty place in a subdivided area because they can't afford to stay there. They're moving into the forest areas and getting burned out, and it's a pretty spot to live.

I realize the problem is people, so maybe the ecosystem idea is a wonderful one if we can keep people out of certain areas and we live here and this will be here, but I know that the farmers can



work with the Endangered Species Act if you'll talk to us, and I think we could do a good job. I think that the loggers can do a good job, and I don't hear any of them.

I hear the people getting up here saying, You guys—I mean, I feel this idea that the loggers don't want—they think that the loggers don't want bears and wolves and I don't really think they think like that at all. I think all of us want the same things, and we can live in an environment together. I don't think locking us out is the answer or losing our grazing rights is the answer. I think we can all work together.

Senator BAUCUS. Thank you, Susan.

### STATEMENT OF CLARENCE TABOR, RONAN, MT

Mr. TABOR. Senator Baucus, my name is Clarence Tabor. I was born and raised in Ronan, Montana, here two miles west out on Mud Creek.

I left the old, hot haystack about 31 years ago. It was as hot as this on the sticker patch. I worked the last 31 years for the Forest Service on the Flathead National Forest, and my comments are only my own, they do not reflect those of the government.

I was working in engineering and did the surveys for 13 miles up in Bunker in the virgin country. I did the surveys out in Griffin Creek in virgin country from Star Meadows to Marion, again up at Spotted Bear and that area. Back in those days, we had camps set up, Mr. Baucus, and in those camps we had to stay for 10 days at a time. We would have maybe a few black bears in camp and no grizzlies. The next camp we would have maybe higher up in the basin in a different drainage, and we would have grizzly bears in our camp. When we got done with the seasons, our tents were literally shredded. They came in the flaps and left wherever they wanted to go.

The science we have before us today studied that same South Fork Study where those bears are, and the studies are done on roads, and a lot of times they've got bear bait that actually bait the bears to come down and get recorded, and they don't bait them all year long, only for a season at a time. The scientist says that later in the year the bears go to the top of the mountain, and the bears aren't where they're expected to be. They're usually in that area. They haven't been there before those roads are there. The bears were where they wanted to be.

I say if they want to study that and prove that, they need to check that in other areas and find out what makes the bear come up to the top of the mountain. The high alpine country, that's where they always have been before and now.

I don't see it in science. I think the answer is in common sense and balance. Half of our natural forests is in wilderness already, and only 30 percent of that part that's outside can be harvested. When this forest plan comes, 559 million back logs sitting out there on the shelf are ready to come to the mill. Now, there are only 32 million ready to come to the mill. About five mills have been sold off, auctioned to the highest dollar.

People are out of work, and the answer is not where we're headed but to work and have the jobs along with it.

Senator BAUCUS. Thank you.

### STATEMENT OF ART MADSEN, POLSON/PABLO, MT

Mr. MADSEN. Art Madsen from Polson, Pablo. I live in Pablo, work in Polson.

First of all, let me say I'm for the environment also, and I'm for preserving our animals, and I think there's one big problem in the world today, and that's our liberal agenda that we have in our Congress and in our leadership and our Nation, and I think that's the biggest problem we have.

Now, let me say this. Yesterday morning my wife was out in our front yard, and she likes to go out and listen to the birds and have her breakfast outdoors. Well, she heard a funny squeal, a whistle kind of, so she kind of was taken aback. That's something unusual. Well, it happened again, so she turned around and looked, and when she did, a great big cougar was chasing a deer right out the other side of the little pond in a clump of trees.

I know there was a deer in there last spring, and it had a fawn, and I'm sure that cougar was after that fawn, but let me say this. It wasn't very long ago that my two grandchildren were playing out exactly on the other side of the pond. I'm just thankful we didn't have them up this weekend and have them out there, or that cougar might have been taking one of them, and you know what happens.

My wife and I have seen cougar in the woods hiking in the backcountry ready to pounce on us. When he seen there were two of us, he turned and pounced the other way. They're strong, heavy animals. What sticks with me is the heavy footsteps running away.

I'm concerned we're letting this liberal agenda get away with itself. We've got too many grizzly bears coming down. We've got too many cougar coming down where we live. We are people. Let's put people first and not only on this agenda, but we've got a lot of liberal agendas in Washington, the schools, you name it. You're on the wrong track.

Common sense has left some of you liberal people. You don't have common sense anymore, and why I don't know except possibly you don't have to work for a living.

Let me remind you that we had about four or five as many people over here in the old church. We're working people. They know they've got their common sense, but somehow you lose it when you're born with a golden spoon in your mouth, or a green spoon in your mouth.

Let me say this. I am concerned, Senator Baucus, when you go back to Washington that you will do as you usually do and vote for your own agenda and ignore everything that's said here today. I hope that's not so.

Senator BAUCUS. You'll find that's not so. Thank you.

We've got two more. I've got to get to Billings tonight, and this has been a good hearing, so let's wrap it up with final two.

Go ahead.

### STATEMENT OF ROGER SULLIVAN, WHITEFISH, MT

Mr. SULLIVAN. Thank you, Senator. My name is Roger Sullivan. I am from Whitefish, Montana and I have only a couple of comments to make.

I hope that during the reauthorization process the public access to the endangered species process is maintained as is presently allowed in the Endangered Species Act, where citizens can petition for a listing if it is not initiated by one of the designated agencies.

Senator BAUCUS. That's in there.

Mr. SULLIVAN. I very much appreciate your efforts to open up the process beyond the—beyond the Fish and Wildlife Service to State agencies. I think that's commendable, but I think we also have to keep public interest entities involved in the process, and I hope that's maintained throughout the process, and also the very important provision for citizens' suits.

Remember, that the courts that have ruled that the Federal agencies have violated their mandatory duties under the Endangered Species Act, such as with the spotted owl, for instance, were Federal court appointees of President Reagan, a very conservative individual. I think it's very important that, although you're encouraging these decisions to be made on a sound scientific basis and peer review, that we also have to realize that—we all have had the experience to know that the expert scientists retained by the different individuals are going to disagree, and I think in our democracy the final arbiter of the public interest and agency adherence to Congressional intent must be the Federal courts as allowed under citizens' suits.

Thank you.

Senator BAUCUS. Thank you, Roger. Appreciate that.

#### STATEMENT OF AMY TIDDLER, LIVINGSTON, MT

Ms. TIDDLER. Hi. My name is Amy Tiddler.

Senator BAUCUS. You're last, Amy, it better be good.

Ms. TIDDLER. I am last, and it's very quick.

I'm from Livingston, and I moved here about two weeks ago. I spent six years in Washington, DC and decided it was time to leave and leave politics and city behind, and the reason I moved to Montana is to enjoy the wildlife and animal resources that are abundant here.

I grew up on a farm in Eastern Ohio and saw what happened due to neglect of wildlife resources and wildlife and saw what happened to my farming community that was once very small and has now become much more populated since then, and I want to thank you for your strong support on your ESA and ask you to hold strong on the amendment.

Thank you.

Senator BAUCUS. Thank you very much, Amy.

I want to thank everybody. This has been a very helpful eight hours. There have been a lot of very strongly felt, heartfelt, sincere views stated today from everyone, from lots of different perspectives, and I very much appreciate that and take it all to heart, and I've learned a lot.

There's certain themes that have come through which I think are very helpful. One is putting people first and getting people involved in the process early on. That is a theme that came through here, and I appreciate that. We intended to include that in the legislation.



A lot about science today. It's clear that there's a better role for more peer science. There's lots of aspects to this problem, particularly listing, delisting, but also development of recovery plans, and also incentives for those landowners who want to get involved.

I think that's very helpful, and the more State involvement, local government involvement, people involvement, the better. I know some people think there's going to be more gridlock, but I do think and do feel that, with earlier, meaningful involvement, not just talking, but actually ideas and plans on how to develop ways to work with various species that are on the verge of becoming listed, we're much more likely to have a resolution that not only prevents that species from becoming listed, which helps everyone, but also in a way that is more agreeable to more people than otherwise would be the case.

Again, I want to thank you all. There will be several more hearings on this subject, and I hope to have more here at home, if not around the country, as well as in Washington.

This will be reauthorized sometime next year, and so there's ample time now for everyone to sift through what's been said today and to come up with some ideas and refinements.

I know people sometimes speak with emotions, but I know they mean what they say. I took this job to try to solve problems. It sounds corny, but what makes my blood flow is to help solve problems for the greater good of people, and it's my pledge to do whatever I can and to exercise whatever energy I have to accomplish that.

We're all Montanans. We all know that we love our State. There's no better State. We're as proud of our State as Texans are of Texas. We may not be so loud about it. We love our State.

We do have to work together. As unglamorous as that is, if we do, we're going to come up with a better State so we can go out hunting more and fishing more and boost our incomes more, whatever our jobs might be, so we're not fighting in a hot gym all day long about things that are important but solve it so we can go forward and spend our time even more effectively.

I want to thank Jolene again. I don't know anybody who has worked harder or longer without a rest than our court reporter. Again, I'd like to thank Dick and Nancy and Bob at the Ronan High School for helping make the facilities available and also the police force and lots of other people here that could be doing other things on Saturday, and I thank you again.

This is one step along the way. We're going to keep working to improve it. Thank you very much.

The hearing is adjourned.

[Whereupon, the committee was adjourned, to reconvene at the call of the Chair.]

[Statements submitted for the record and the bill S. 921 follow:]

Senate Field Hearing  
Endangered Species Act  
July 23, 1994

Senator Baucus and Members of the Committee:

For the record, my name is Dick Knox. I am a State Representative representing District 93. District 93 is comprised of all of Fergus County except Lewistown, all of Judith Basic County, all of Petroleum County and the eastern portion of Cascade County that includes Belt.

I stand here today as the Co-Chair with Representative Emily Swanson of Bozeman, of a group of Montanans working together on ways to improve the Endangered Species Act.

I think the composition of this group is very interesting and somewhat unique. It is comprised in part of State Legislators, 5 Republicans, and 5 Democrats, from both the House and Senate. The balance of the group is made up of Montanans from environmental groups and Montanans from resource oriented groups. These Montanans come literally from all portions of the State, from Sidney to Hungry Horse, from North Central and Southern Montana to all points between. To say that this is a diverse group could be called an understatement. We have people from:

1. MT. Wildlife Federation
2. Audubon Society
3. MT. Wilderness Association
4. Greater Yellowstone Coalition

In addition, we have a wildlife biologist from the University of Montana. From the resource side we have people from:

1. MT. Stockgrowers
2. The oil and gas industry
3. Montana Farm Bureau
4. W.I.F.E. (Women involved in Farm Economics)
5. Starting with our next meeting the woods products industry will be represented.

The first decisions that Rep. Swanson and I made as Co-chairs working together, dealt with the organizations that might possibly participate, plus the positions that the individuals from the various organizations held within their organizational structure. We felt that because of the highly contentious nature of the issues we would confront and because of some degree of polarization between the environmental community and resource based groups, that we would not include the executive directors of the various organizations in our working group.

Let me be very clear, this is not in any way a reflection on those individuals, many of whom are here today. They have without exception been cooperative and helpful. We simply felt this was a reality we had to face if our group was to function.

We asked these people to recommend individuals from within their organizations that were not only knowledgeable, but had the ability to work in an extremely diverse group on contentious issues. These recommendations were made, we contacted them, and after listening to the rationale regarding the make-up of the group and the purpose of the group they agreed to participate in a process we all knew was going to be difficult at best.

The group of legislators from both sides of the aisle possess the same qualifications as the people from the organizations. They are very diverse in their backgrounds and experience, and because of this represent virtually all of the interest groups I previously mentioned. In addition, they have the experience needed in evaluating and crafting legislation and amendments to legislation.

I am very pleased to report that after a somewhat tense and apprehensive start, the group has achieved a great deal of mutual trust and confidence in one another. This does not mean that there is mutual agreement on all the issues, far from it, what it does mean is that after four difficult and strenuous sessions we have agreed to focus on these areas where there is a possibility of consensus. Those are:

1. Greater State involvement in the process, particularly in the preparation and implementation of recovery plans. We are also discussing ways in which the States might be Pro-active in preventing the necessity for listing, thereby possibly avoiding the heavy economic disruption sometimes caused by the listing of a specie as endangered.



2. Criteria for the creation and implementation of recovery plans.
3. Criteria to improve the de-listing process.
4. Ways to provide incentives to States to conserve threatened and endangered species.

At this point in my testimony I must emphasize one of the criteria under which the group is operating.

The committee members represent themselves and do not represent the views of any organization. To carry this fact to a logical conclusion, any proposals to amend the act that come from this group are coming from a diverse group of Montanans that are acting independently from any interest group or organization.

We are operating with definite ground rules, they include:

1. The committee will make decisions by consensus.
2. Seeking consensus does not mean that members are expected to compromise their values or adopt positions adverse to their interest.
3. The intent of the committee is to develop recommendations to improve the structure and implementation of the act, and not to seek significant changes in either the purpose or the scope of the act.
4. All meetings of the committee and any interim task force are open to the public.

We are being assisted in this process by Mr. Matt McKinney of the Governors Office of natural resource dispute resolution. He is facilitating the meetings, taking notes on actions by the committee, compiling the records of committee action and sending it along with other pertinent information to all members. His assistance and expertise has been very helpful.

One additional fact, and then I will close. the committee has unanimously agreed to focus their efforts on the Baucus, Chafee Bill S.B. 921, therefore proposals or concepts that the group can reach consensus on will be drafted as proposed amendments to S.B. 921.

I share with a great many Montanans a concern that the E.S.A. is inflexible and that in some situations causes unnecessary economic hardship. I believe that the Act can be amended to alleviate some of these problems and still maintain its primary function, the preservation and rehabilitation of threatened and endangered species. The Grizzly bear in Montana, I personally believe, is a classic example. To be specific, de-listing as a function of the act is not working properly. The grizzly was listed in July 1975 and a recovery population goal of 560 was set. In 1982, 12 years ago population estimates ranged from 440-680. If you average these numbers you have 560. The bear was not de-listed. In 1986, eight years ago, the population estimates were 549-813 for an average of 681. Again the grizzly was not de-listed, and no compelling reason was given. Instead, new criteria was added to the recovery plan. A legitimate question can be asked. Why do we not now have enough grizzly to insure the future welfare of the species, and why must Montana endure the stringent controls on resource management and development that are in place throughout the grizzly's range, which includes much of Northwest Montana, and the east slope of the Rockies?

This example is of great concern to many Montanans particularly those whose jobs and livelihood depend on our natural resources.

Montana has a growing wolf population that is protected under the act, recovery goals have been set, and the potential range of the wolf is huge. The possibility of long term economic disruption and hardship is real, unless the de-listing criteria is improved.

I thank you Senator for the opportunity to testify before this hearing.

Representative Dick Knox  
H.D. 93

## TESTIMONY ON REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

## CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

Presented to the Senate Environment and Public Works Committee  
Hearing at Ronan, Montana on July 23, 1994 by Ms. Rhonda Swaney,  
Vice-Chair, Confederated Salish and Kootenai Tribes of the  
Flathead Nation, Montana

Mr. Chairman, on behalf of the Confederated Salish and Kootenai Tribes of the Flathead Nation, I would like to welcome you to the Flathead Indian Reservation, the homeland of the Confederated Salish and Kootenai Tribes. The Tribes appreciate the opportunity to provide testimony to the Senate Committee on Environment and Public Works regarding reauthorization of the Endangered Species Act (ESA).

Tribal natural resource management recognizes the importance of each and all of the components of the natural world. Species great and small each have a function and an important role to play. The Confederated Salish and Kootenai Tribes actively manage for three endangered species (the peregrine falcon, the bald eagle and the northern gray wolf) and one threatened species (the grizzly bear). In addition, new baseline data are currently being collected on a variety of other lesser known native species, some of which may also be in jeopardy of local, regional or rangewide extinction.

The Tribal Wildlife Management Program devotes a considerable amount of time to management of listed species in the form of annual population monitoring, research, habitat management planning, impact assessment, coordination with landowners on endangered and threatened species issues, interagency management planning, preparation of biological assessments for pending projects, Section 7 consultations and peregrine falcon reintroduction.

The Tribal Fisheries Management Program has taken a proactive approach to management of bull trout, through a catch and release program. The Fisheries Program is considering a more stringent policy on bull trout than may be initiated on surrounding lands due to the recent "warranted but precluded" finding by the U. S. Fish and Wildlife Service. The Program has also been very active in interagency management activities involving resident bull trout and Columbia River salmon.

Currently, the Tribes are unable to devote much effort to rare plants due to a lack of funding for baseline inventories and day-to-day management. However, the Tribes are very interested



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in the status of many of these species due to their cultural, medicinal and ecological values.

Through the Tribes' active involvement in endangered and threatened species management, we have had an opportunity to evaluate the ESA, its processes and its positive and negative aspects. Our major comments follow.

- 1) The listing process and designation of critical habitat must be based upon sound scientific data. The entire premise of the ESA is based upon the review of existing sound scientific data. It should be the only criteria for listing. Likewise, the designation of critical habitat should also be based upon sound scientific information because of its importance to the continued existence of a species. We believe that there are ample options for public input in the existing process to allow public concerns to be voiced. Additionally, the potential for Habitat Conservation Plans and for incentives for private conservation efforts needs greater effort in the critical habitat designation phase.
- 2) The reauthorization must realize the importance of subspecies and races of species as essential to species viability in planning recovery efforts for listed species. These individual subspecies and races of species comprise the very building blocks of the species themselves. If we allow them to be extirpated in a piecemeal fashion, in only a matter of time we will be dealing with the potential loss and the listing of the species of which subspecies are a component.
- 3) Funding authorization to carry out the mandates of the ESA have been absolutely inadequate. Adequate funding will be essential to clear away the backlog of pending listing petitions and fund recovery efforts. A local example of this problem is the recent inability of the U. S. Fish and Wildlife Service to list the bull trout even though listing was warranted. At the least, funding levels should allow no more than an 18 month decision period regarding listing petitions.
- 4) Most Indian Tribes are affected by the provisions of the ESA and are expected to take an active role in the management of listed species occurring on their reservations. Additionally, many Tribes administer effective endangered species management programs, but none of the legislation introduced thus far contains language that acknowledges Tribes as managers or provides funding opportunities for the expected management activities. This omission needs to be remedied and Tribes must be acknowledged as full and active participants in the ESA, similar to the role of states. Funding opportunities available to states must also be offered to Tribes.

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- 5) The need exists to place emphasis on sound ecologically-based habitat management as a primary focal point of endangered species management. Current efforts at developing ecosystem management are a good beginning in an effort to examine multi-species relationships and concerns in the face of human activities.
- 6) Reauthorization of the ESA should encompass a close working relationship with the National Biological Survey and all concerned parties in order to expedite acquisition of data on the status of rare species and limited habitats. By utilizing the services of the National Biological Survey to collect baseline data on potentially jeopardized species, it should be possible to identify those species and the threats to their existence at a time when options for their recovery may still exist. The development of Habitat Conservation Plans for these species should also be stressed as a method to potentially avoid eventual listing.
- 7) Reauthorization of the ESA should provide incentives for cooperative efforts between agencies and the private sector in conservation efforts for listed species. Monetary incentives provided to preclude alteration of important habitat, the use of the expertise of federal management agency personnel to assist private landowners, facilitation of land exchanges and an increased use of Habitat Conservation Plans are suggested incentives that should be explored.
- 8) The Tribes' interaction with the U. S. Fish and Wildlife Service through the Section 7 consultation process has been both effective and efficient. Unfortunately, in dealing with the National Marine Fisheries Service on Columbia River salmon issues, the Tribes have experienced a lack of response to our comments on the Service's Biological Opinion for Operations of the Columbia River. The two federal management agencies should facilitate greater interaction with all potentially-affected parties in ESA management activities.

In conclusion, the culture of the Tribes has allowed us to co-exist with the many species in our environment, including many that are now listed as threatened or endangered. Given today's pressure on native species, the importance of a strong ESA cannot be understated. Thus, we request that our testimony be incorporated into Senate Bill 921. Again, the Tribes appreciate the opportunity to provide testimony on this issue.



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**TESTIMONY OF  
DR. LORIN L. HICKS  
MANAGER, FISH AND WILDLIFE RESOURCES  
PLUM CREEK TIMBER COMPANY, L.P.**

**BEFORE THE  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE**

**RONAN, MONTANA  
JULY 23, 1994**

Mr. Chairman and Members of the Committee:

I am Dr. Lorin L. Hicks, Manager of Fish and Wildlife Resources for Plum Creek Timber Company. I appreciate this opportunity to discuss Plum Creek's perspectives on the Endangered Species Act and our experience in managing our forestlands for species protected by this important law. In my testimony, I will discuss our concerns and impacts under the Act, two projects we are currently involved in to address these concerns, and our recommendations for incorporating private landowner perspectives into the ESA.

Plum Creek owns 2.1 million acres of forestland in Montana, Idaho and Washington. Much of that ownership is in an alternate section "checkerboard" ownership pattern with federal lands. As you can expect, this land ownership pattern poses real challenges for both Plum Creek and the federal government. Add to this the fact that many prominent or proposed federally-listed threatened and endangered species such as grizzly bears, spotted owls, bald eagles, and bull trout find suitable habitat on Plum Creek's



forestlands, and you may understand why we feel uniquely qualified to discuss the effects of the ESA on private lands with you today.

For nearly 2 decades, Plum Creek has been involved with state and federal wildlife agencies in the coordination of research and management activities for threatened and endangered species. In addition to our staff biologists and hydrologists, we have consulting biologists under contract to survey and inventory our lands for species that are federally listed or proposed for ESA protection. For example, at this moment we have 13 biologists surveying for spotted owls on checkerboard ownership in the Washington Cascades. We also currently have 6 fisheries biologists searching for bull trout in Montana, Idaho and Washington watersheds. These survey efforts include both federal lands and Plum Creek lands across our ownership. We routinely share these data with appropriate state and federal agencies.

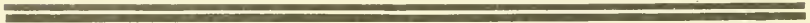
Despite all this coordination and technical assistance, there still remains widespread confusion regarding ESA obligations between public and private landowners. Public land managers, under the ESA, are required to manage public lands to further the recovery of listed species while private landowners are obligated to avoid the "taking" of individual members of listed species on lands under their control. Our interpretation of the ESA suggests to us that public and private landowners can share common goals for conservation of federally listed species but have different roles in the management of these species.

Many private landowners have been adversely impacted by administration and interpretation of the ESA and Plum Creek is no exception. For example, many projects to build roads across federal land to access Plum Creek land have been held up due to

ESA-related delays, including one project here in Montana's Swan Valley to build 150 feet of road which has been held up for 8 years because of disagreement over its impact on grizzly bears. Access to our land base is fundamental to our business, and a congressionally mandated legal right under ANILCA. Plum Creek has nearly a third of its lands in central and western Washington within the spotted owl "take" circles in which forest management is either precluded or severely restricted, causing substantial economic harm. Each of these "take" circles, on average, tie up at least \$25 million of timber to protect one pair of owls. As you can see, the ESA can have dramatic economic side effects for the land owner.

Land exchanges, even those with substantial environmental benefits, have also been delayed or even canceled due to confusion over ESA obligations. This confusion has historically resulted from either lack of a policy for management of endangered species on federal lands or uncertainty about what Plum Creek's obligation should be regarding habitat management for these species on our private lands. The ESA itself is silent about land exchanges. The Act could be significantly strengthened by adding a provision authorizing land exchanges that are part of habitat conservation plans or otherwise further the intent of the Act. Currently, land exchanges with the U.S. Forest Service require 5-7 years to complete. Revisions to the Act which would accelerate the timetable for land exchanges would both benefit conservation planning for wildlife and private landowner returns on their investments.

The endless litigation surrounding the ESA has also added to the uncertainty and reluctance for private landowners to commit to a course of action which is likely to be very expensive and often has been subsequently negated by the courts. This "investment" or economic side is not currently a part of the ESA equation. For the Act



to be successful, Congress must find a way to include economic consideration as a part of ESA administration. For instance, there currently is no incentive for private landowners to experiment with new forestry practices that can accelerate the development of desired future habitat. The current system of federally-imposed "thresholds" creates situations where private landowners rapidly harvest habitat down to the threshold and litigate for the rest of their timber resource. Tax deductions or credits for beneficial forest practices such as new forestry harvests, wildlife corridors or stream enhancement could provide substantive incentives for private landowners to meet their economic objectives with environmentally desirable results. Plum Creek has some specific thoughts on that issue that were presented to the House Committee on Merchant Marine and Fisheries in October of last year and that testimony is included with my written comments.

There are, however, a few rays of hope within the ESA. We are currently involved in two negotiations with the federal government to resolve current and future impacts of the ESA on our business. Briefly, I will describe our proposed conservation agreement on grizzly bears with the U.S. Fish and Wildlife Service and the Habitat Conservation Plan we are pursuing with the Service on spotted owls and other species in the Washington Cascades. I will be brief because the details of these two projects have not yet been finalized. However, we are cautiously optimistic that these two voluntary attempts to work within the confines of the ESA will be successful.

#### Grizzly Bear Conservation Agreement

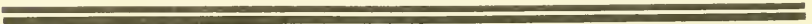
Nearly one-tenth of Plum Creek's total ownership, over 200,000 acres, is within habitat considered occupied by the threatened grizzly bear. The conservation agreement we are currently negotiating with the U.S. Fish and Wildlife Service will produce a set of



environmentally sound and operationally feasible "best management practices" for grizzly bear habitat management on Plum Creek lands. The objective of our BMP's is to augment recovery of the grizzly bear on federal lands by providing additional protection from disturbance, displacement and illegal "taking" of grizzlies on Plum Creek lands. The BMP's incorporate the latest grizzly bear research findings and the most advanced geographic information system technology to address the 3 basic concerns for grizzly bear management: retention of effective security cover, timing of forest management operations, and management of road systems. When completed, our conservation agreement will provide the basis for coordinated grizzly bear habitat management across Plum Creek and U.S. Forest Service ownership in the MS-1 lands within the Northern Continental Divide Ecosystem. This agreement will build on the significant progress that land managers have made in protecting grizzly bear habitat over the last decade. We are encouraged that, as a result of improved management, the grizzly bear population in the NCDE is nearing federal recovery goals and that fewer bears are dying. For example, from 1973 to 1975 - prior to ESA listing - an average of slightly more than 27 bears died each year from human causes. For the past 3 years - 1990 to 1993 - an average of only 9 bears a year have died. Our conservation agreement with the U.S. Fish and Wildlife Service will help reduce this number even further. We are encouraged by the cooperative approach taken by the U.S. Fish and Wildlife Service and believe the conservation agreement process could serve as a model for other private landowners seeking to pursue environmentally and economically sound management plans.

#### Cascades Habitat Conservation Plan

Last week, Plum Creek and the U.S. Fish and Wildlife Service announced their intent to develop a Habitat Conservation Plan (HCP) for 170,000 acres of Plum Creek's holdings in the Cascade Mountains of Washington State. The press release is included



in my written testimony. The need for such a comprehensive plan for this complex area of intermingled ownership was identified in President Clinton's Forest Plan finalized earlier this year. Using an ecosystem management philosophy, and a multi-species approach, this HCP will attempt to address long term habitat concerns for listed species such as spotted owls, marbled murrelets and grizzly bears, as well as develop prelisting agreements for species of concern such as goshawks, bull trout, steelhead and salmon. We believe it will be the most ambitious HCP ever undertaken. Plum Creek has assembled a team of over 20 scientists and technicians to develop the plan, including scientists that were instrumental in the development of recent scientific strategies for federal lands.

We are similarly encouraged by the U.S. Fish and Wildlife Service's approach to HCPs. Unfortunately, the Act, together with NEPA, make such progressive HCPs either difficult or impossible to accomplish. For example, the HCP must consider alternatives to the plan selected. NEPA then requires a duplicative, costly and time-consuming analysis. In addition, the Service must consult with itself and conclude that no jeopardy is caused to the species as a result of issuing the incidental take permit described in the HCP. The HCP process provides enough detail for informed decision making without overlapping requirements for NEPA compliance and section 7 consultations, which increase costs and causes delay without improving final decisions. Moreover, there is no legal basis in the ESA for pre-listing agreements. Provisions authorizing pre-listing agreements should be added to the Act. Ultimately, these suggested revisions will make the habitat conservation process within the ESA much more "user friendly".

Plum Creek's two planning efforts represent a "leap of faith" by Plum Creek in the Endangered Species Act. While we are cautiously optimistic about our abilities to work

with the federal agencies, the Administration and ultimately with Congress to resolve the management dilemmas imposed by the ESA, we are not there yet. Federal agencies like the U.S. Fish and Wildlife Service and the U.S. Forest Service seem to be resolving their internal disputes but have yet to develop a consistent policy for ESA administration on federal lands. We must recognize that, for private landowners like Plum Creek to work progressively within the ESA, economics and operational common sense must be incorporated into biological strategies. If these efforts are unsuccessful, we face the unpleasant alternative of litigation to protect our property rights. We feel that both the environment and the ESA would be better served by a concerted effort to make the system work.

There are essential elements that Congress must consider in addressing a reauthorization of the Endangered Species Act. Your bill, Mr. Chairman, provides a framework to begin discussions. Congress must recognize the different, but essential roles of private landowners and the federal government. The cooperative approach Plum Creek and the U.S. Fish and Wildlife Service have embarked upon provides hope that the ESA can work. We urge you to consider reforms of the Act, suggested here today, that facilitate such efforts.

We appreciate your invitation to participate in this hearing today and stand ready to assist you in your continuing review of the Endangered Species Act.

Thank you Mr. Chairman.

Testimony of Dr. John J. Craighead

Before the Senate Committee on Environment and Public Works,  
Hearing on the Reauthorization of the Endangered Species Act

5125 Orchard Street  
Missoula, MT 59803  
July 23, 1994

Mr. Chairman and honorable Committee members, I am John Craighead, retired ecologist, former Director of the University of Montana's USFWS Cooperative Wildlife Research Unit, Professor Emeritus of Zoology and Forestry at the University of Montana, and founder of the Wildlife-Wildlands Institute, a private not-for-profit research organization.

I have conducted scientific studies of the grizzly bear in three wilderness ecosystems for a continuous period of thirty-five years. During that time, I have published numerous scientific papers and popular articles on bear biology, and I and my colleagues are now in the process of publishing a monograph, *The Grizzly Bears of Yellowstone: Their Ecology and Management*.

Today, I will draw on my long experience with grizzly bears and their habitat requirements to testify how The Endangered Species Act and its various amendments have functioned to preserve this threatened species in the contiguous 48 states. I appreciate this opportunity; it is a privilege and an honor.

**The Endangered Species Act (ESA) of 1973**

Members of Congress, you are to be congratulated. The Endangered Species Act (P.L. 94325, as amended; U.S. Congress 1973) is truly visionary legislation intended to provide protection and consideration for "endangered" species - plants and animals in danger of extinction throughout all or a significant part of their range - and for "threatened" species - those likely to become endangered.

Success in bringing about recovery of the bald eagle and the peregrine falcon demonstrates that the ESA can be highly effective, when the federal, state, and private sectors marshal the political will necessary to enforce the biological directives specified by the Act. However, the ESA has several flaws and implementation problems that have hindered its effectiveness in restoring grizzly bear populations. The law and its implementation have not been sufficiently science-oriented. D.J. Rohlf (1991) expressed this well in stating: "The statute itself, as well as agency regulations and policies that implement the law, include provisions that fail to account accurately for important biological concepts such as ecosystem conservation, patch dynamics, and the probabilistic nature of stochastic threats to a species' persistence." These concepts are of great importance in grizzly bear ecology. (Craighead et al. 1994, in prep.)

Procedures for interpreting and implementing the Act arguably have been even more self-defeating than inherent flaws in the law. For example, in Section 2(b) of the ESA, Congress recognized that precipitous and/or long-term decline in species may be the result of broader ecosystem dysfunction and, therefore, clearly and forcefully stated: "The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened



species depend may be conserved...". In other words, management agencies are specifically directed to maintain the functional integrity of ecosystems, large or small, that include endangered or threatened species. This has not been accomplished largely because the prime directive has been amended through direct efforts of the management agencies. Not only is the directive clear in the law, it was specifically emphasized by the ESA's author, Representative John Dingell, when he stated: "Once this bill is enacted, the appropriate Secretary, whether Interior, Agriculture or whatever, will have to take action...The purposes of the bill include the conservation of the species and the ecosystem upon which they depend, and every agency of the government is committed to see that those purposes are carried out....[T]he agencies of government can no longer plead that they can do nothing about it. They can and they must. The law is clear." (119 Cong. Rec. 42913). But this clarity of the law was altered.

Although there is strong scientific evidence that the ESA has been effective in halting a decline in grizzly bear numbers first detected in the early 1970's, scientific evidence for a recovery trend is weak. It is especially unconvincing for the bear populations inhabiting the Yellowstone Ecosystem (Craighead et al. 1994, in prep). At this point I would like to enter into the published proceedings Attachment A - an index to our manuscript, *The Grizzly Bears of Yellowstone*. Nevertheless, without the protection offered by the ESA over the past 20 years, grizzly bear populations in the lower 48 states would most probably be at nonviable levels thwarting any possible recovery. We have been making headway on grizzly bear population recovery, but we can and must do better.

A first step is for the management agencies to respond more directly to congressional directives inherent in the ESA. For example, Section 7 of the ESA directs federal agencies charged with management of wildlife to ensure that their activities do not jeopardize the continued existence of listed species or adversely modify habitat critical to the species. Agencies are required under Section 4 to design and implement plans for the recovery and eventual delisting of any species officially recognized ("listed") as endangered or threatened. A Grizzly Bear Recovery Plan, was completed in 1982 (USFWS 1982) and revised in 1993 (USFWS 1993). However, it has numerous biological weaknesses, well documented through the review process (Craighead et al. 1992, Hammer 1992, Shaffer 1992, and Craighead et al. 1994, in prep.). The most serious relate to habitat requirements and habitat loss. In response to Section 7 of the ESA, the Grizzly Bear Recovery Plan does provide a methodology for preserving habitat considered to be necessary to the survival of the bear, but it is unacceptable and ineffective principally because of how the intent of Section 7 has been thwarted and Section 4, frequently ignored by the management agencies.

#### Recast ESA Interpretations

Section 7 of the ESA specifies that federal agencies responsible for land management (the Forest Service, the U.S. Department of the Interior, the Bureau of Land Management [BLM], and the National Park Service, as well) may not jeopardize listed species and must consult with the appropriate wildlife management agency (US Fish and Wildlife Service, in the case of the grizzly bear), whenever a proposed course of action may affect a listed

species and must act in accordance with that agency's written biological opinion. These provisions of the ESA would appear to be strongly protective of the grizzly bear's habitat needs, which extensive research has shown to be entire ecosystems, not enclaves within them. (Craighead 1980; Craighead 1994, in prep.). For the grizzly bear in the Northern Rockies, an ecosystem was defined to be a mosaic of plant community types with their associated animal species that recurs more or less predictably throughout a large geographic area and its associated water courses and mountain ranges. (Craighead et al. 1994, in prep). Unfortunately, however, amendments providing latitude for interpretation of Congress' intent have permitted actions since the bear's listing in 1975 that have destroyed and fragmented substantial amounts of its habitat. Also, habitat loss has occurred by default, as well as by outright modification or destruction.

Senate Hearings were convened in Cody, Wyoming, in December, 1976 (U.S. Congress 1977), to delineate critical grizzly bear habitat in the Yellowstone Ecosystem, and elsewhere in the contiguous 48 states. Despite a biologically-derived delineation for the Yellowstone ecosystem offered by scientists at the Senate Hearings (Craighead 1980), the federal land management agencies responded to the economic forces behind the multiple-use ethic, rather than to biological imperatives. Their response was reflected in the ESA Amendments of 1978 which defined the concept of "critical habitat" (U.S. Congress 1978, Section 2), but stated that "critical habitat may be established for species now listed..." (Sec 2(2), emphasis mine), and later, that the requirement of specifying critical habitat did not apply to the grizzly bear (listed in 1975) or to any other species listed prior to 1978 (Sec 11(1)). Thus, designation of critical habitat for the grizzly bear was badly compromised and opened to redefinition and interpretation by the agencies. As a result, the original ecosystem-mandated delineation of critical grizzly bear habitat has not been achieved. This failure translates to habitat loss that jeopardizes recovery.

When the grizzly bear was listed in 1975 as a threatened species throughout the contiguous 48 states, the response of federal management agencies to the requirements of Section 7 was first to delineate critical habitat as entire ecosystems in compliance with the Congressional directive of Section 2(b) (U.S. Congress 1977, Craighead 1980). Following the Cody Hearings in 1976, the full realization of what this entailed in loss of forest management options and heavy political pressure from private sector resource users (outfitters and guides, cattlemen, loggers, etc.) led the Forest Service to redefine critical grizzly bear habitat under their jurisdiction in terms of Management Situation (MS) categories. They assigned MS categories for parcels of habitat as a function of (1) presence or foreseeable presence of grizzly bears and (2) quality of the habitat for meeting the needs of grizzly bears. The five MS categories that resulted specified management recommendations for the bears within enclaves of habitat under different conditions of bear population numbers and habitat quality, and only under MS-1 were the needs of bears accorded primacy over other land-use values. This redefinition of critical habitat was adopted by all of the other land management agencies. Thus, protection of entire ecosystems as critical habitat was rejected outright, although this was clearly the intent of Congress, as well as the scientifically established needs of the

species.

The process of assigning MS designations is highly subjective and, in some cases, arbitrary. Past history has shown the classification system to provide a ready opportunity for political manipulation and many incursions into recovery zone habitat by extractive industry. Since the establishment of MS criteria for delineating critical grizzly bear habitat, concerns have arisen for preserving biodiversity (a holistic, process-oriented assemblage of plant and animal populations). Because threatened and endangered species are intricately interrelated with and dependent on other forms of life, it has become apparent that protecting large ecosystems for the grizzly bear will provide protection for other listed species, as well as for the great diversity of associated life forms. Focusing on the preservation of areas (ecosystems), rather than species greatly simplifies the task of protecting and recovering listed species, and at great savings to the taxpayer.

Interpretations adopted by the agencies in 1986, based on the ESA Amendments of 1982 (U.S. Congress 1982, Section 4(a)(2)), have further weakened the intent of the ESA in several ways. Resource agencies were allowed to conclude that resource extractive plans and actions could proceed ("no adverse affects" designation) without formal consultation or supportive biological rationale. Furthermore, ESA Amendments of 1978 (U.S. Congress 1978, Section 11(7)) suggest that damage to critical habitat is permissible when such action might diminish a species' chances for population recovery, but not threaten its ultimate survival (Rohlf 1991). Whatever unmeasurable distinction this implies, it obviously thwarts the intent of the ESA. The security of grizzly bears inhabiting *de facto* wilderness is in jeopardy so long as land management agencies can proceed with resource-extractive plans stated to present "no adverse affects," yet not provide credible scientific documentation to support such decisions.

#### **Habitat and Population Viability**

Here, I will focus briefly on the bear's space and habitat needs. I believe there is still opportunity to provide the necessary habitat without disrupting the social and economic structure currently prevailing in the Northern Rockies.

Many researchers, including myself and my colleagues, have argued that long-term persistence of grizzly bear populations will require far larger reserves of high quality habitat than are available in the recovery zones currently supporting populations of grizzly bears - the Yellowstone, the Northern Continental Divide, the Selkirk Mountains, and the Cabinet-Yaak - or in the two large wilderness recovery zones - the North Cascades and the Selway-Bitterroot - that do not now support resident grizzly bears, although they once did. Only two ecosystems, The Yellowstone and the Northern Continental Divide, support populations that may have the potential for short-term viability (100 years). None, in isolation, possess the requisites for long-term viability (500+ years; Metzgar & Bader 1992, Shaffer 1992, Craighead et al. 1994, in prep). Space necessary to ensure survival of grizzly bears in the long-term is contingent on how many bears are required for long-term population viability, and this is partially a function of habitat security and the quality and stability of the food resources.

### **Demands on Disputed Habitat**

Because a grizzly bear population must utilize all the vegetation complexes and life zones within a wilderness ecosystem to meet its food and other biological requirements, and because of the miscarriage of the intent of Section 3 of the ESA requiring designation of critical habitat, I, and numerous other biologists (Open letter to the U.S. Congress, Sep. 1, 1993, signed by 52 scientists), believe it is imperative that most of the remaining de facto wilderness in the Northern Rockies be designated as wilderness. Much of it abuts on wilderness areas now designated as grizzly bear recovery zones. Such protection would provide the necessary space and resources for grizzly bear recovery and long-term persistence (Shaffer 1992; Craighead et al. 1994, in prep.).

Most of the remaining roadless areas in the Northern Rockies are not part of the Forest Service timber base. More than 80 percent of these roadless areas have been judged by the Forest Service as unsuited to timber production, and they are manageable for timber harvesting only at substantial losses to the U.S. taxpayer. To open the remnant roadless areas in Montana or throughout the Northern Rockies to timber harvest would represent pure economic waste (Power 1994). Furthermore, protecting roadless areas from extractive uses would protect the biodiversity of the Northern Rockies, a resource that will become of increasing scientific and economic value as the economy shifts from commodity harvest to nonconsumptive enterprises dependent on healthy wilderness ecosystems. Many scientists believe that preserving one species at a time will not be effective and that preserving ecosystem biodiversity must take precedence over short-lived or expedient economic considerations. "Protecting the natural landscape amounts to protecting the most important source of economic vitality in the region. Such action will protect and develop jobs, not threaten them." (Power 1994). It will also protect grizzly bear habitat, the most essential element in ensuring the demographic and genetic strength necessary for long-term population persistence. (Craighead et al. 1994, in prep.). Legal protection for ecosystems can be accomplished through the ESA if certain amendments are deleted or reworded. This would appear to be a better approach than drafting an Endangered Ecosystem Act (Liverman 1991) or providing legislative protection through designations of wilderness, park, or forest reserves such as the Ancient Forest Protection Act (H.R. 842, 102nd Congress., 1st Sess. (1992)).

The ESA has not measured up to expectations due more to a lack of political will to enforce it than to the Acts technical deficiencies (Kuehl 1993). How well the ESA functions in the future will depend on the ESA remaining a strong and legal tool, and on how well scientific knowledge is translated into public policy.

### **Recovery Imperatives**

There are a number of specific goals that can and must be attained under the ESA if the Act is to be effective in preserving the grizzly bear in perpetuity. I believe the six that follow to be critical:

- 1) Specific protection of adequate and appropriate habitat. This will require ecosystem protection.
- 2) Detailed vegetation mapping of all recovery areas



utilizing satellite multispectral imagery and computer assistance, in conjunction with detailed standardized vegetation sampling. This will permit quantitative vegetation comparisons and analyses between the various recovery areas and their respective ecosystems.

3) Maintenance of effective (breeding) populations sufficiently large to assure demographic and genetic persistence. Adequate data and technology are now available to develop a population viability assessment basic to defining management and recovery criteria.

4) Reduction and eventual elimination of human-caused mortality. Efforts in this direction have been excellent, but pressure to restore sport hunting privileges must be resisted until recovery is complete.

5) Listing of species as threatened or endangered based only on biological considerations, with integration of sociopolitical and economic factors into the biological recovery strategy as necessary, with biological considerations taking precedence.

6) Strengthening political will to support fully the ESA and, specifically, the recovery of the grizzly bear. Protection of its ecosystem-wide habitat requirements will alleviate the need to list as threatened or endangered other species dependent on the same ecosystem. An effective recovery plan for the grizzly bear will serve essentially as an integrated multispecies recovery plan. Species-by-species recovery will still be necessary, but will continue to be costly and often ineffective where the habitat requirements are large wilderness ecosystem.

#### Strengthening of the ESA

I reiterate that the Endangered Species Act of 1973 has served as a fine instrument for preserving threatened and endangered species, and that the ESA Amendments of 1978 and 1982 have served, in general, to strengthen the intent of the Act. However, certain amendments should be deleted or reworded. Amendments proposed by S.921 will further strengthen the Act. However, I believe that efforts for recovery of the grizzly bear (and other species) would be greatly enhanced by incorporating certain amending language into S.921 and modifying certain amendments it currently proposes. All changes I propose are consistent with the intent of the expressed Purpose (Sec. 2(b)) of the ESA of 1973. Each of the changes I propose is prefaced by a brief rationale, followed by a listing of some specific sections of the several documents which amendment would pertain. However, there may be others that I have overlooked.

1) "Commercial data," while necessary when formulating recovery plans, should not be a consideration in decisions as to whether a species is listed as threatened or endangered, and its critical habitat delineated. Such determinations should be based solely on biological criteria. To conclude that any species is not threatened or endangered because its listing might complicate commercial affairs is inimical to the purpose of the ESA. Amendment of at least the following would be necessary:

a. Section 4(b) of the ESA of 1973.

b. Section 2(a)(2) of ESA Amendments of 1982 that

amends Section 4(b).

- c. Section 3(b) of S.921, a proposed amending of section 4(b)(1)(A).

2) Delineation of critical habitat should be required for species listed as threatened or endangered prior to the 1978 amendments. Failure to designate critical habitat for grizzly bears in the lower 48 states has resulted in arbitrary decision-making that threatens the bear's recovery and long-term survival. An amendment directing that critical habitat be delineated for species listed prior to 1978 would supervene at least the following:

- a. Section 2(2) of ESA Amendments of 1978 that amends Section 3.
- b. Section 11(1) of ESA Amendments of 1978 that amends Section 4.

3) The current practice of differentiating alterations of critical habitat that would only hurt a species' chances for recovery from those that would imperil its survival is illogical and contrary to the intent of the ESA. Species are listed in the first place because they are threatened with or in imminent danger of extinction, and delineation of critical habitat is basic for recovery from that status. An amendment specifying "recovery" and "survival" to have equivalent connotations would resolve this purely semantic artificiality. Such an amendment would, at the least, affect:

- a. Section 3 of ESA Amendments of 1978 that amends Section 7.
- b. Section 11(7) of ESA Amendments of 1978 that amends Section 4.

4) ESA Amendments of 1978 provided specific directives to resource management agencies requiring that the USFWS or NMFS be consulted about any proposed action that may adversely affect a threatened or endangered species and/or its critical habitat, and that the USFWS or NMFS render a written biological opinion regarding the implications of the proposed action. The ESA amendments of 1982 altered the language in such a way as to permit the USFWS and NMFS to adopt regulations in 1986 that substantially limited application of the Act's consultation procedures. Although they may concur, in writing, with "no adverse affects" decisions made by agencies sponsoring proposed actions, they need not provide a biological rationale for concurrence. This informal process has been abused and is contrary to the checks-and-balances intended to operate between the USFWS/NMFS and the principal state and federal land management agencies. Amendment of the ESA to require (1) formal consultation on proposed actions potentially damaging to the species or its habitat, and (2) rendering of a written biological rationale, will, at the least, affect Section 4(a)(2) of the ESA Amendments of 1982 that amends Section 7(b).

5) Lastly, I harbor concerns about the processes by which the states and private industries will become involved in creating recovery plans for listed species located largely on federal land. While the participation

of state agencies and the private sector in federal recovery initiatives is desirable, neither the states nor individuals should pursue recovery programs that are autonomous of a centrally administered, cohesive program. The difficulty of coordinating objectives and effort would impede recovery. Regarding the role of the states and individuals in the recovery process, I suggest a careful reconsideration of proposed amendment Section 9(a) of S.921 which amends Section 13.

In conclusion, I wish to commend Senator Baucus for his unflinching support of the ESA and for his fine amendment bill, S.921.

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TESTIMONY OF DR. CHRIS SERVHEEN, GRIZZLY BEAR RECOVERY COORDINATOR,  
UNITED STATES FISH AND WILDLIFE SERVICE, BEFORE THE SENATE  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS REGARDING THE RECOVERY OF  
THE GRIZZLY BEAR UNDER THE ENDANGERED SPECIES ACT.

July 23, 1994

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Thank you for the opportunity to testify today on the Endangered Species Act and recovery of the grizzly bear.

I am Dr. Chris Servheen. I have been the Grizzly Bear Recovery Coordinator for the U.S. Fish and Wildlife Service since 1981. My primary duty is to coordinate all research and management activities associated with recovery and, in general, to facilitate the recovery of the grizzly bear in the lower 48 States where the great bear exists today -- Wyoming, Montana, Idaho, and Washington. I received my Ph.D. from the University of Montana where I studied grizzly bears in the Mission Mountains, just a few miles east of where we are today in Ronan, Montana.

The grizzly bear has been listed as a threatened species under the Endangered Species Act (Act) since 1975. Intensive recovery efforts have been underway since 1980 with the development and implementation of the first Grizzly Bear Recovery Plan. The grizzly bear was listed because there was concern about: the numbers of bears being killed each year; habitat and the management of the habitat for the bear; the lack of regulatory mechanisms for habitat and population management; and, other human-related factors that were continuing to threaten the survival of this species.

Since the listing of the grizzly bear, dramatic improvements have been made in addressing these factors in most grizzly bear recovery areas. Improvements in the status and management of the grizzly bear are due in large part to the cooperative efforts of state and Federal agencies in implementing the Endangered Species Act.

A major factor in improving grizzly bear status was the creation in 1983 of the Interagency Grizzly Bear Committee (or IGBC) which involves the cooperative participation of state and Federal agencies as well as Canadian agencies in managing bears and bear habitat in the northern Rockies. Improvements in the status of the grizzly bear would not have been possible without the involvement and dedication of the IGBC, and the IGBC would not have been formed if listing of the grizzly bear under the Act had not occurred.

The IGBC provides a forum for all affected states and Federal agencies to identify priority actions to protect and manage the bear and its habitat. The IGBC also provides a forum to exchange ideas for future recovery action and formulate information and education priorities. The IGBC also provides opportunity for



interested private sector parties to discuss concerns and present information on grizzly bear recovery.

#### Status of the Grizzly Bear

In the lower 48 States, grizzly bears currently are found in five separate populations. The Bitterroot ecosystem in east-central Idaho and western Montana is slated for grizzly bear recovery efforts starting in 1994 in order to get grizzly bears into this area once again.

Survivorship data indicate that the grizzly bear population in the Yellowstone ecosystem is currently increasing. Human-caused mortalities have declined in the Yellowstone area since the 1980's because of management actions such as improved sanitation to eliminate human/bear conflicts. While the population is increasing in the Yellowstone areas, it continues to require intensive management in order to limit human-caused mortality and to assure that habitat does not decline in amount or quality.

Currently, there is no data on the population trend of grizzly bears in the Northern Continental Divide Ecosystem (NCDE). What is known is that numbers of bears are increasing in some areas in the ecosystem such as the Rocky Mountain Front and the Blackfeet Indian Reservation. Human-caused mortality in the NCDE also has declined since the 1980's. There continues to be concern about the status of the small bear population in the Mission Mountains and the levels of human development in and around the ecosystem, especially development and fragmentation of private lands within bear habitat.

The population in the Cabinet/Yaak ecosystem has changed little since the early 1980's. Four young female grizzly bears have been placed into the Cabinet Mountains in the last four years. It is still too soon to document the results of the movement of bears into the Cabinets, but we are optimistic that this effort will result in more cubs being born in this area in the future.

The Selkirk Mountains of north Idaho and northeast Washington were a place that held few if any grizzly bears in the early 1980's. However, reproducing females have now been documented and a small population is known to live in this area.

#### Impact of the Endangered Species Act on Grizzly Bear Recovery and Grizzly Bear Recovery Planning

The Endangered Species Act has helped in grizzly bear recovery by providing funding for recovery actions and research; providing grants to the States to support their involvement through Section 6 of the Act; providing Federal law and Federal law enforcement to assist state authorities in limiting illegal kills; and, by allowing review of all Federal projects through the application of the Section 7 consultation process.

The Act also has enabled the coordinated production of the second version of the grizzly bear recovery plan -- an adaptive management document that will be revised every 5 years. This dynamic process of recovery and recovery planning is necessary because much new information and technology is being developed and becoming available for use on grizzly bears and in habitat management.

State and Federal agencies spend more than one million dollars annually on grizzly bear research. Due to the intensive level of research, grizzly bear management is one of the fastest changing fields in wildlife science and management. New information and its application in section 7 consultations have resulted in dramatic improvements in habitat management. For example, thousands of miles of roads in grizzly bear habitat are being managed to increase habitat security; sanitation standards have been implemented in many front country and backcountry areas to limit bear access to human foods; and, silvicultural practices are now designed to limit forest opening size and to take place seasonally when bears are not in the area.

A system to measure the levels of human impact on grizzly bear habitat is being developed using the cumulative effects assessment process. This system will be applied to all grizzly bear habitat on a regular schedule to allow managers to understand and limit the cumulative impacts of human activities on grizzly bear habitat quality and quantity.

In order to limit disturbance, the states of Montana and Wyoming now have fulltime bear-human conflict management biologists who work with local communities to help them live in bear habitat with minimal conflict. Similar efforts are under way with Tribes on both the Blackfeet and Flathead Indian reservations.

Intensive public education efforts are underway through partnerships with local governments such as Missoula County and with private conservation groups like Brown Bear Resources, the Center for Wildlife Information, Defenders of Wildlife, and the National Wildlife Federation. These education efforts are aimed at building better public understanding about bears and their needs and thus establishing a firm base of support among the local public for the steps necessary to maintain bears for the long-term.

#### Involvement of Private Landowners in Grizzly Bear Recovery

Private landowners are a key factor in grizzly bear recovery because so much important grizzly bear habitat is in private ownership. The Swan Valley has more than 30,000 acres of private lands and the North Fork of the Flathead Valley has more than 15,000 acres of private ownership. The Service is continuing to look for more incentives to allow us to assist these private landowners in carrying out conservation actions on their own lands.

Examples of possible conservation measures the Service would like to pursue and/or initiate include forgoing land subdivision through potential easements, establishing sanitation facilities to keep bears from human-related foods, road closures and road restrictions, and maintenance of timber stands, especially along streams.

#### Proactive Efforts on the Part of Plum Creek Timber Company

The Fish and Wildlife Service is very encouraged by the current efforts of Plum Creek Timber Company to develop a comprehensive conservation agreement to manage their lands in the Swan Valley to benefit the grizzly bear. Plum Creek is the largest private owner of grizzly bear habitat south of Canada. The Service believes the actions of Plum Creek Company will play a significant role in determining if grizzly bears can live in Swan Valley and the Mission Mountains in the future. The Service looks forward to their cooperation in developing an agreement that provides for managing their land to allow bears to live in and move across the Valley. They are to be commended for their willingness to integrate bear conservation into their timber management programs. This sort of proactive support for endangered and threatened species conservation serves as a guide for the business community throughout the rest of the country.

#### Grizzly Bear Linkage Zone Evaluation

The Service, through the agreement and cooperation of the IGBC, is involved in developing and testing a model to allow us to understand what areas are available to bears that provide to them opportunity to move across areas of human development like Swan Valley and the North and Middle Fork valleys of the Flathead River. The Act and its associated grizzly bear recovery process have allowed the Service to focus on the issue of linkage zones, which are of importance not only to grizzly bears but possibly also to other large mammals such as wolves, lynx, wolverines, mountain lions, and even elk.

The model uses computer technology to allow us to visualize the spacial distribution of human influences on the landscape so that potential linkage zones between areas can be identified. This system allows a landscape level identification of areas in need of special management for wildlife. This system can also be used by county land management planners to focus efforts to maintain the quality of life for local residents.

The initial products of this system have been made available to county commissioners in western Montana and they have found it a useful tool to aid in their local land management efforts. This is a good example of how grizzly bear management under the Act benefits local governments in Montana as well as the grizzly bear and other wildlife. If funding is available, the Service plans to

extend this linkage zone analysis process to all lands between the existing grizzly bear zones or ecosystems in order to determine if it is possible for bears to move between these areas. Computer-generated maps of human influence will be available to the local governments in these areas as a result of this analysis.

#### Grizzly Bear Recovery in the Bitterroot Ecosystem

Under the newly revised Grizzly Bear Recovery Plan a new effort and major benefit to the grizzly will be starting this year in the Bitterroot ecosystem. Here, in this largest contiguous piece of wilderness left in the lower 48 states, the state and Federal agencies will begin the decision-making process to consider placing grizzly bears into this area. This will be done through the National Environmental Policy Act (NEPA).

Because of intensive discussions and listening sessions over the past few months, a cooperative spirit exists between the state and Federal agencies, the local conservation groups in the area, the local wood products industry and labor unions, and the Idaho State Legislature's Grizzly Bear Oversight Committee. These groups have agreed to work together to initiate the NEPA process and make the eventual recovery of the grizzly in the Bitterroot area a reality.

The addition of bears to the Bitterroot, as stated in the 1993 revision of the Grizzly Bear Recovery Plan, will greatly add to the area where grizzlies exist and to the security of grizzly bear existence south of Canada. The grizzly bear recovery effort in the Bitterroot has the potential to be an integrated, multi-species recovery effort that can serve both listed species such as the grizzly and the wolf, and species of concern such as the lynx and the wolverine.

The management of grizzly bears in this area will be the focal point of a true ecosystem approach to management that could benefit grizzly bears, elk, fisheries, wolves, lynx, and wolverines. Because grizzly bear management could aid all of these species, it has the potential to greatly increase the efficiency of wildlife management in this area.

In summary, the status of the grizzly bear has improved significantly since it was listed in 1975. This progress is due to a coordinated state and Federal approach, with important contributions by private landowners, to implement recovery under the existing Act. I believe great progress has been made in grizzly bear recovery, but that much also remains to be done.

Continued habitat development and human population pressures require careful habitat and population management if the grizzly bear is to be maintained. The grizzly bear recovery program offers an opportunity to implement a multi-species ecosystem approach on the special lands remaining in the Northern Rockies. The recovery



of the grizzly bear can, and I believe will, be one of the success stories of the Endangered Species Act if the efforts we have begun continue into the future.

Thank you for this opportunity to testify.



# Montana Stockgrowers Association

Serving Montana's Cattle Industry Since 1884

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Before the United States Senate Committee on  
Environment and Public Works

Testimony  
of

John E. Bloomquist, on behalf of the  
Montana Stockgrowers Association

Date: July 23, 1994

SUBJECT: Endangered Species Act Reauthorization

## INTRODUCTION

Chairman Baucus, my name is John Bloomquist, and I am an attorney from Dillon, Montana, where I practice in the fields of Natural Resource and Environmental Law. I am testifying before you today on behalf of the Montana Stockgrowers Association, an organization of over 3,500 ranchers, landowners, and livestock producers located throughout the state of Montana. The Montana Stockgrowers Association (MSGA) appreciates this opportunity to testify before the Senate EPW Committee on the issue of Endangered Species Act Reauthorization. Furthermore, MSGA would like to personally thank you, Senator Baucus, for scheduling a field hearing in Montana on this critical issue.

My testimony today will feature various perspectives of the Montana livestock industry's experience with activities surrounding grizzly bear recovery, as well as suggestions for improving the function, acceptance, and policy making ramifications of the Endangered Species Act.

GRIZZLY BEAR RECOVERY EFFORTS IN MONTANA

Generally, when one thinks of grizzly bear recovery planning in Montana, and interactions with the livestock industry, an issue which immediately comes to mind is the issue of predation of livestock. Predation of livestock is of concern to many livestock producers in the state of Montana, and the concern stems from the ability to protect one's property from listed predator species of cattle or sheep which graze in the state of Montana.

Such high profile incidents, such as that of John Schuler near Choteau, indicate significant individual hardships which are borne by those attempting to protect livestock from predator attacks. The MSGA believes this indicates that Section 3 of the present Endangered Species Act, regarding the "take" of listed species, in subject to reexamination.

Efforts surrounding grizzly bear recovery in Montana exemplifies both the positive aspects of the present Endangered Species Act, and the negative impacts of the present Act, which require change in any reauthorization. The exact status of the grizzly bear in Montana is a topic which may be hotly debated by biologists associated with the issue. However, most would agree that recovery efforts have benefitted the species, and efforts made to ensure that the grizzly bear does not become endangered in the northern intermountain region.

One contentious issue surrounding grizzly bear recovery in Montana, addresses the issue of critical habitat for the species and associated federal land management decisions made as a result of grizzly bear recovery. As you know, in Montana, a great deal of grazing activity occurs on federal lands in the western portion of the state. Decisions made on these federal lands primarily managed by the U.S. Forest Service and the Bureau of Land Management have impacted livestock operations in the state. Most of the domestic sheep allotments located in "situation

one" grizzly bear habitat have been eliminated, and there are those who urge grizzly bear corridor management or "linkage zones" for federal land management decisions in western Montana. Corridor management planning, or linkage zone management, are cause for great concern among other users of national forest lands.

In addition to the changes and concerns surrounding federal land management and grazing associated with grizzly bear recovery, is the continued concern regarding predation of livestock. In Montana, predation by grizzly bears is probably not as significant as is in our neighboring state of Wyoming, however, livestock losses particularly along the Rocky Mountain Front, continue to be a problem with grizzly bear recovery.

A recent lawsuit filed by certain "environmental" groups on a particular domestic sheep grazing allotment exemplifies the concern livestock producers have with any Endangered Species designation. In this particular instance, a domestic sheep grazing allotment, which has been utilized for over 70 years, is being threatened by the existence of grizzly bear and gray wolf populations. The lawsuit is essentially asking for an end to domestic sheep grazing on the allotment, and has resulted in Forest Service action preventing the permittee from using any type of predator control on the allotment, unless administered by the State or Federal Animal Damage Control officers. Examples such as this cause a great deal of skepticism and concern within the livestock industry surrounding grizzly bear recovery, or for that matter, any type of recovery planning associated with the listing of any species as threatened or endangered.

Also, in Montana, experience with grizzly recovery exemplifies another area of the Endangered Species Act which may require rethinking. In general, in designated grizzly bear habitat most Forest Plans dictate that decisions will favor the needs of the grizzly bear when habitat and other land uses conflict. In other words,



federal land management decisions will defer to the grizzly bear each and every time other uses of federal lands converge. This basic conflict has driven many land use decisions and lawsuits surrounding grizzly bear habitat in terms of precluding timber sales, restricting road access, limiting grazing use, and as set forth above, precluding federal land users from protecting their interests when listed species are present. It is the position of the MSGA that for the Endangered Species Act to be more widely accepted and probably more beneficial to a species in the long run, efforts should be made to temper many of the Draconian impacts of the listing of any type of species on critical habitats located in Montana.

I also believe that the grizzly bear experience in Montana also exemplifies another concern with the Endangered Species Act as presently administered. This issue surrounds the process for the delisting of a species as well as the issue surrounding what scientific data and information would be utilized regarding the listing or delisting of endangered species. The history of the grizzly bear recovery planning efforts suggest that recovery plans need a consistent and recognized process for scientific peer review as well as a need for an identified process which would assess all the verifiable and reliable scientific data for the consideration of delisting of any species. Any efforts in reauthorization to address this issue would be in the benefit of continued acceptance of listing decisions as well as lending predictability and credibility to the process.

#### **PRINCIPLES AND ISSUES WHICH NEED TO BE ADDRESSED IN THE ENDANGERED SPECIES ACT REAUTHORIZATION**

The MSGA recognizes that certain principles and considerations should be the basis for any reauthorization of the Endangered Species Act by Congress. MSGA recommends and urges that this Committee and Congress consider and implement the

following changes in the Endangered Species Act:

1. Federal agencies must expand consideration of social and economic impacts of listing species beyond the present reference in the Endangered Species Act to the recovery planning process or the designation of critical habitats. Since only 20 percent of listed species have been designated critical habitat, 80 percent have had no social or economic review of any kind. Recovery plans should include state and local representatives in addition to federal experts, and public hearings in affected counties should be required prior to the approval of any recovery plans.

2. Protection of private property rights. As the list of designated and petitioned species continues to grow, much of the impacts will be felt on those who own and enjoy private property in Montana. The Endangered Species Act must recognize private property rights so the burden is not imposed and borne by the owners of a particular species' habitat. MSGA would urge measures be considered which allow private property owners a role in protecting their property and managing designated habitats as well as redefining the provisions of the Act regarding "take", "harass" and "harm" so that prohibitions only apply to acts which can in fact cause injury to a member of the species.

In addition, measures should provide guidance to private landowners for habitat considerations when called upon for assistance by such landowners. Flexibility and the recognized need of landowners to take measures to facilitate species recovery while protecting private property interests is required. Incentives for private landowners should be carefully constructed and crafted so as not to impose undue burdens on landowners who happen to own critical habitat.

3. A general return of the Endangered Species Act to its original goal of the species protection is needed. The Endangered Species Act has become a tool for various land use, and land control agendas, which in the long run not only adversely affect human inhabitants of areas which are designated for recovery, but also in the long run inhibit true comprehensive programs for species protection. Measures should be added which require species protection decisions on federal lands consider the needs and rights of other federal land users.

4. Any Endangered Species Act Reauthorization must ensure that science is utilized to the most reliable and verifiable manner possible. Peer review of listing, and delisting should be provided by those with real knowledge of the species and the needs of a particular species. Biologists and scientists from outside of government should be available for consultation.

5. Establish specific procedures and processes for delisting. Presently, the Endangered Species Act does not specifically designate the process for delisting. Congress should establish this process for clear administrative direction.

6. Specifically allow judicial review of both the denial and acceptance of petitions to list species. Presently, it is clear that the denial of a petition to list a certain species may be subject to judicial review. MSGA is of the position that decisions to list a particular species, based upon a petition, should also be subject to judicial review.

7. Require that states be consulted on the status of petitioned species. Furthermore, require that state consultation be mandated in the listing, recovery planning, and delisting process. States should be consulted to fill any data or information gaps which may be necessary in designating critical

habitats. Often times in the past, the states or other entities which have particularized knowledge regarding information on critical habitats, have not been thoroughly consulted. Also, states should be allowed the option to develop and implement recovery plans provided that social and economic considerations are mandated.

#### CONCLUSION

The MSGA appreciates the opportunity to present its views to this Committee on Endangered Species Act Reauthorization. It is clear that the Endangered Species Act needs certain changes to prevent the Act from losing its original focus -- the protection of truly endangered or threatened species. The Act should not be a tool for the furtherance of hidden agendas. Further, reauthorization should truly consider the human, economic, and social impacts of Endangered Species Act administration. Efforts by Congress to change the Act should ensure species protection in a manner which recognizes the burdens and impacts placed upon those who live and work lands where listed species may be recovered. Thank you.



**STATEMENT OF JOHN COOK,  
GENERAL MANAGER & VICE PRESIDENT OF OPERATIONS,  
COLUMBIA FALLS ALUMINUM COMPANY**

**HEARING ON ENDANGERED SPECIES ACT  
REAUTHORIZATION**

**BEFORE THE  
SENATE COMMITTEE ON ENVIRONMENT  
AND PUBLIC WORKS**

**July 23, 1994  
Ronan, Montana**

Chairman Baucus and members of the Senate Committee on Environment and Public Works, thank you for the opportunity to testify today regarding reauthorization of the Endangered Species Act. Thank you also for holding your hearing in the Northwest. Here your committee can hear regional perspectives first-hand from a part of the nation where the ESA has already had a major impact on daily life.

My name is John Cook. I am General Manager & Vice President of Operations for Columbia Falls Aluminum Company, the largest single employer in the Flathead Valley and under present and former ownerships, a major contributor for 40 years to the state of Montana's economy. As you noted in inviting us to testify today, perhaps no Montana business is more directly affected than Columbia Falls Aluminum by one current ESA listing situation, that of certain wild salmon stocks.

Before I start, I would like to lead into this with a note of personal recognition to you, Senator Baucus, for a related matter. You, Senator Mark Hatfield and House Speaker Tom Foley recently wrote President Clinton an urgent letter of concern about the tens of millions of dollars of unexpected costs facing the region over a hastily made and controversial agency decision to spill water over Northwest dams for the possible benefit of juvenile salmon. You noted that the spill program appeared potentially dangerous to the listed stocks and inconsistent with the sound science recommended by the Snake River salmon recovery team set up under the ESA. You told the President that the decision appeared to have been made without adequate regard for the impact on salmon or Northwest ratepayers.

As a direct result of your action, the administration declared that any extraordinary costs undertaken to protect salmon under the ESA would not be paid for

by electric ratepayers in Montana and elsewhere in the Northwest, but rather by the Federal Treasury. The administration recognized your point that salmon recovery is in the national interest. The region thanks you for your efforts.

In your invitation you noted that you are particularly interested in hearing our perspectives on your own ESA reauthorization bill, Senate Bill 921, and on other steps needed to ensure that social and economic impacts are minimized in recovering endangered species. We are pleased to offer those perspectives and to illustrate ourselves as one example of what can be affected if the ESA is implemented as dictated --presently all too often with more concession to political correctness or bureaucratic intransigence than to necessary scientific and economic rationality.

Northwest electric ratepayers spent \$350 million on salmon recovery last year and will likely spend that and more each year for the foreseeable future. That is twice as much as the annual budget of the National Marine Fisheries Service, which oversees Northwest salmon recovery under the ESA. That illustrates why economic considerations, now so sorely lacking in the ESA, must receive much greater attention in a balanced recovery equation.

Here is an example of what is at stake in Montana: Columbia Falls Aluminum Company at full capacity employs 650 men and women with a payroll of some \$25 million, a state property tax contribution of \$2 million, local materials and services purchases of \$35 million and power purchases that are presently in the \$80-million range yearly. Each one of our jobs indirectly supports between two and three others in the area. The Northwest represents 43 percent of the nation's primary aluminum production capacity, and collectively the industry provides a \$2 billion annual

economic benefit to the region.

BPA periodically raises its rates, in part, to pay for the salmon recovery efforts. Each increase in those rates adds several million dollars yearly to the cost of operating an aluminum plant and becomes a crucial factor in our ability to operate. Electricity is the single biggest cost in producing aluminum (in our case, over 50 percent), and is irreplaceable. It is essential that the ESA be restructured so that it is implemented as cost effectively as possible to minimize impact on the economy.

Your bill, Senator, is a broad-ranging one, embracing the kind of consensus necessary to move the ESA issue forward with appropriate protection for both the human and natural environments. Following are some observations on its provisions and some you may consider adding.

We especially encourage your bill's provision that the government should seek to minimize adverse economic consequences of recovery plans. Currently, as you know, no consideration may be given in a listing decision to economic or social effects. And the resulting recovery plans rarely take economic impacts into account. Only in the designation of critical habitat are impacts addressed, and even there in only a very limited fashion. Further, more than 80 percent of listed species have no designated critical habitat and so lack even this limited consideration. One economic approach being advanced is to have the ESA provide a priority for the recovery plan option having the least socioeconomic cost. We urge you to explore this avenue as well.

The often runaway costs of recovery decision are sometimes made worse by lack of scientific controls. Current law does not ensure the quality or reliability of the



"best available" evidence. Your bill would help ensure the employment of what is truly the best science. The bill sensibly incorporates peer review into the ESA, recognizing it as the quality control system used in the scientific arena. Significantly, it also requires the proposed listing to identify and clarify additional data needed for the recovery plan.

Consideration of the economic, social and environmental effects of federal proposals and actions is currently required in the form of Environmental Impact Statements under the National Environmental Policy Act. Requiring the major Endangered Species Act decision processes, such as: Species listing; Section 7 consultations; Recovery planning; and Critical habitat designation to comply with NEPA would be not only appropriate but also consistent with other congressional declarations. This step would go a long way toward reversing procedural inconsistencies and ensuring good peer review and the application of best available science. We urge you to consider it.

Your bill gives priority to a multi-species, ecosystem-based approach to conservation, rather than the species-by-species approach now employed. You also encourage federal agencies to conserve candidate species before they reach the need for listing. Your steps ideally will help species while also proving more cost effective. However, great caution should be exercised that these steps do not inadvertently increase the ESA's already stringent potential restrictions on public and private land and resource use.

Definition of species should be clarified in the act's reauthorization, to take into account the difficulties encountered in ESA application. The purity of Northwest

salmon stocks has been greatly diminished by hatchery production and cross-basin introduction of stocks. Yet, we are looking at 214 possible salmon stock listings among four species. Doing so under these circumstances is not a pragmatic approach to natural resources management. In a related vein, we encourage you to consider establishment of a priority in listings, with species having greater priority than subspecies.

Much work on the ESA should be done in the area of Section 7 consultations, wherein federal agencies consult annually with the relevant ESA lead agency to determine if their actions pose a jeopardy to the continued existence of a listed species. The biological opinions resulting from these consultations were intended to spell out immediate actions that agencies must take to avoid a jeopardy finding for that particular year's consultations. Consultations may precede recovery plan adoption by several years and the biological opinions never were meant to be interpreted as *de facto*, permanent recovery plan measures.

That is just what has happened, however, in the case of ESA-listed Northwest salmon and consultations on the federal hydropower system. The lines of distinction between consultation and recovery planning have been allowed to become so blurred that no cause-and-effect analysis exists of hydropower operations impacts.

As a result, a federal appeals court in the Northwest, acting on a challenge to a biological opinion on hydropower operations, has virtually set itself up as a recovery planner and administrator for the hydro system. In the process, the court has repeatedly interpreted the ESA in such a way as to preclude participation by affected parties and to apply entirely different standards to actions of one federal activity,

hydropower operations, versus another, harvest management.

Any reauthorization of the ESA cries out for additional differentiation between the consultation and recovery objectives, to prevent this kind of morass from developing again. In addition, customers of federal agencies, as parties most directly affected by changes in their activities, should be granted the opportunity to fully participate in Section 7 consultations.

This is not an exhaustive analysis of our view on the ESA, but should give you a flavor for how we think the act can be made more efficient.

Interior Secretary Babbitt has labeled as "train wrecks" the collision between regional economies and ESA listings. He has pledged to avoid such train wrecks in the future. Just last month you participated in his announcement of a "user-friendly" approach to the ESA. This, along with improvements such as proposed in your bill, can go far in derailing those train wrecks.

To sum up: There is no ideal situation, with humans existing and hopefully progressing in this country alongside many other species. We have to find a way to accomplish species preservation as well as economic development and growth simultaneously. This can only be achieved, we believe, by following a consultative process that encourages both economic- and scientifically-based decisions.

We commend you for your courage in taking the leadership on this sensitive and controversial issue.

TESTIMONY OF  
NOEL E. WILLIAMS, COMMISSIONER  
LINCOLN COUNTY, MONTANA  
BEFORE THE  
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
RE:  
REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

JULY 23, 1994  
RONAN, MONTANA



THANK YOU MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE FOR GIVING ME THE OPPORTUNITY TO TESTIFY BEFORE YOU TODAY. MY NAME IS NOEL WILLIAMS AND I AM A NORTHWESTERN MONTANA TREE FARMER, CHAIRMAN OF THE LINCOLN COUNTY BOARD OF COMMISSIONERS, AND AM CURRENTLY SERVING AS PRESIDENT AND SPOKESMAN FOR THE WESTERN INTERSTATE REGION OF THE NATIONAL ASSOCIATION OF COUNTIES. THE RE-AUTHORIZATION OF THE ENDANGERED SPECIES ACT HAS SIGNIFICANT IMPLICATIONS FOR THE LOCAL ECONOMIES, LOCAL CUSTOMS, AND LOCAL CULTURES OF THE WEST, AND THE OUTCOME OF YOUR EFFORTS WILL AFFECT, IN ONE WAY OR ANOTHER, THE LIVES OF THOUSANDS OF FAMILIES THROUGHOUT THE REGION. I KNOW YOU WILL KEEP THIS IN MIND DURING YOUR DELIBERATIONS.

FROM MY TRAVELS WITHIN THE FOURTEEN WESTERN STATES, I CAN SAY WITHOUT RESERVATION THAT OUR ELECTED OFFICIALS AT THE COUNTY LEVEL ARE IN VIRTUALLY COMPLETE AGREEMENT OF THE NEED FOR CHANGE. OUR NATION'S COUNTIES ARE CONCERNED THAT THE CONTINUING EXPANSION OF THE NUMBER OF POTENTIALLY "LISTABLE" SPECIES WILL PRESENT EVERMORE SERIOUS PROBLEMS FOR OUR FUTURE DUE TO NEGATIVE IMPACTS ON JOB CREATION, CUSTOMARY LIFE STYLES, LOCAL TAX REVENUES, AND ECONOMIC OPPORTUNITY. COUNTIES BELIEVE THERE IS AN INSUFFICIENT RECOGNITION OF THE HUMAN, SOCIAL, AND ECONOMIC CONSEQUENCES DURING THE ESA LISTING AND RECOVERY PROCESS, AND THAT TOO OFTEN TOO LITTLE ATTENTION IS PAID TO STATE AND LOCAL PLANNING POLICIES AND STATE AND LOCAL HABITAT PROTECTION EFFORTS. COUNTY OFFICIALS ARE ALSO CONCERNED THAT PRIVATE PROPERTY RIGHTS ARE TOO OFTEN, IF NOT IGNORED, AT LEAST CONSTRAINED RATHER HEAVY-HANDEDLY IN THE RECOVERY PLANNING PROCESS. WE GENERALLY SUPPORT THE LANGUAGE INCORPORATED IN S.1521(SheIby/Gorton) OVER S.921(Baucus/Chafee) BECAUSE OF ITS GREATER EMPHASIS ON AND CONSIDERATION OF SOCIO-ECONOMIC IMPACTS.

AS YOU ARE PAINFULLY AWARE, OVER THE PAST FEW YEARS THERE HAVE BEEN NUMEROUS CONFLICTS DEVELOP OVER THE LISTING OF SPECIES PURSUANT TO THE ACT AND THE RECOVERY PLANNING PROCESS THAT FOLLOWS. WHETHER IT BE A KANGAROO RAT IN SOUTHERN CALIFORNIA, A RED COCKADED WOODPECKER IN ALABAMA, A DESERT TOTOISE IN NEVADA, A GOLDEN CHEEKED WARBLER IN TEXAS, OR A SPOTTED OWL OR A SALMON OR A GRIZZLY BEAR IN THE NORTHWEST, THE LISTING OF THESE SPECIES

HAS PRODUCED SIGNIFICANT HUMAN PROBLEMS. THERE IS CERTAINLY NO QUESTION THAT IN LINCOLN COUNTY AND THE REST OF NORTHWEST MONTANA CURRENT ESA MANDATED ACTIVITIES, RESTRICTIONS, AND RECOVERY PLANS HAVE INCREASED POWER RATES, HAVE CONSTRAINED RECREATION AND LOWERED ITS POTENTIAL QUALITY, HAVE RESTRICTED LAND MANAGERS' ABILITY TO MANAGE FOR BIODIVERSITY, HAVE CONTRIBUTED TO HIGHER COMMODITY PRICES, AND HAVE SEVERELY AFFECTED THE ABILITY OF THOUSANDS OF HUMANS TO LIVE AND WORK IN OUR NECK OF THE WOODS IN A CUSTOMARY AND TRADITIONAL MANNER.

THERE HAS BEEN A GREAT DEAL OF PUBLIC DEBATE ABOUT THE WISDOM OF INCLUDING OR NOT INCLUDING SOCIAL AND ECONOMIC FACTORS DURING THE LISTING PROCESS, AND IT IS THE CONSENSUS OF VIRTUALLY ALL MY COLLEAGUES THROUOUT THE WEST THAT TO DATE THEY HAVE NOT BEEN ADEQUATELY CONSIDERED. BUSINESSES, JOBS, AND INDEED, WAYS OF LIFE HAVE BEEN LOST DUE TO RECENT LISTINGS. THESE ARE REAL PEOPLE, WITH FAMILIES, MANY OF WHOM HAVE NOT THE MEANS TO PACK UP AND MOVE TO A NEW REGION WHERE JOBS MAY BE MORE PLentiful.

I AM NOT NAIVE ENOUGH TO SUGGEST THAT THE POTENTIAL FOR ECONOMIC LOSS DUE TO THE LISTING OF A SPECIES SHOULD NECESSARILY AFFECT THE BIOLOGICAL DETERMINATION OF THE SPECIE'S FUTURE; HOWEVER, IN RETRO-ANALYSIS, IT APPEARS THAT IN SOME CASES TOO LITTLE EFFORT IS MADE TO EXAMINE THE "SCIENCE" USED TO MAKE THESE DETERMINATIONS, AND TOO LITTLE PEER REVIEW AND COMPETING "SCIENCE" IS ALLOWED IN THE PROCESS. THE U.S. FISH AND WILDLIFE SERVICE AND THE NATIONAL MARINE FISHERIES SERVICE HAVE TOO MUCH AUTONOMY OVER THE INFORMATION AND THE PROCESSES LEADING TO A LISTING. MANY OF THE SCIENTISTS INITIALLY JOINING THESE AGENCIES ARE DEDICATED TO PRESERVATION INTERESTS. THEY ARE PREDISPOSED TO MAKE JUDGMENTS PROTECTING THE SPECIES AND NOT PARTICULARLY INTERESTED IN REVIEWING COMPETING INFORMATION; THEY CREATE AN AGENDA, AND THEN ATTACH BLINDERS TO IT. THIS IS NOT AN INDICTMENT, BUT AN OBSERVATION. THERE ARE OTHER SOURCES FOR "GOOD SCIENCE", INCLUDING ACADEMIA AND, YES, EVEN INDUSTRY. I AM AWARE THE NATIONAL BIOLOGICAL SURVEY IS INTENDED TO

PROVIDE ADDITIONAL CREDENCE TO THE SERVICES' BIOLOGICAL DECISIONS, HOWEVER, PEOPLE WITH THE SAME PRESERVATION MINDSET ARE STAFFING THE SURVEY, AND THERE IS LITTLE HOPE IN THE MULTIPLE USE COMMUNITY THAT THE INFORMATION FROM THE SURVEY WILL BE LITTLE MORE THAN A "RUBBER STAMP" OF SERVICE DETERMINATIONS.

THERE ALSO APPEARS IN TOO MANY CASES TO HAVE BEEN TOO LITTLE CONSIDERATION OF ECONOMIC FACTORS IN THE RECOVERY PLANNING PROCESS. AGAIN, BIOLOGISTS ARE INTERESTED IN THE SPECIES AND THE HABITAT, NOT THE HUMAN IMPLICATIONS OF THEIR ACTIONS. THIS IS THE STAGE WHERE THE OPPORTUNITY EXISTS TO FACTOR IN ECONOMIC IMPACT, JOB LOSS, JOB CREATION, AND OTHER CRITICAL ELEMENTS -- INTO THE DECISIONS ABOUT THE FUTURE OF THE SPECIES, THE HABITAT, AND THE HUMANS. I BELIEVE THE HISTORIC TREND SHOWS TOO LITTLE HAS BEEN DONE IN THIS AREA.

LET ME USE A HEALTH CARE METAPHOR. IF A PERSON IS DIAGNOSED AS HAVING CANCER, THE FIRST PRUDENT THING TO DO IS GET A SECOND OPINION. IF THAT INDEPENDENT SECOND OPINION CONCURS WITH THE FIRST, THE PERSON IS "LISTED" WITH CANCER. NOW, THERE ARE MANY TREATMENTS FOR "RECOVERY", EACH WITH ITS POTENT AND DAMAGING SIDE EFFECTS. AGAIN, DIFFERENT PHYSICIANS (SCIENTISTS) MAY PRESCRIBE DIFFERENT TREATMENTS TO ACHIEVE THE SAME RESULT - HEALING THE PATIENT. BEFORE A TREATMENT REGIME IS SELECTED, ALL THE FACTORS MUST BE INCLUDED, AFFECTED PEOPLE NEED TO BE CONSULTED AND ONLY THEN SHOULD A DECISION BE MADE. THIS IS THE WAY THE ACT SHOULD WORK.... UNFORTUNATELY, THOSE OPPOSED TO MULTIPLE AND RATIONAL USE OF OUR NATION'S NATURAL RESOURCES REFUSE TO ACCEPT SUCH A MODEL.

OUR NATION'S COUNTIES, PARTICULARLY THOSE IN THE WEST WITH WHICH I AM MOST FAMILIAR, ARE NOT OPPOSED TO PROTECTION OF ENDANGERED SPECIES NOR TO HABITAT PROTECTION AND STABILIZATION. THE ISSUE IS HOW WE GO ABOUT ACCOMPLISHING THESE GOALS. I BELIEVE, TOO OFTEN, DECISIONS ASSOCIATED WITH THE ESA ARE BEING DRIVEN BY AN ENVIRONMENTAL AGENDA WITH GOALS LARGER THAN THE PROTECTION OF A PARTICULAR SPECIES. THIS UNDERLYING AGENDA HAS SKEWED THE LISTING AND RECOVERY PROCESS, AND HAS ADDED SOMETIMES UNNECESSARILY TO THE MISERY OF JOB LOSS AND

ECONOMIC DESPAIR. WE NEED TO RISE ABOVE THIS APPROACH AND FIND A MORE BALANCED WAY TO ACHIEVE A POSITIVE RESULT. MR. CHAIRMAN, YOUR COMMITTEE HAS THE WHEREWITHALL TO CREATE THIS BALANCE AND DELIVER TO THE AMERICAN PUBLIC A TOOL THAT WILL PROTECT OUR GREAT DIVERSITY OF FLORA AND FAUNA, AND AT THE SAME TIME BETTER PROTECT OUR TRADITIONS, OUR ECONOMICS, OUR RIGHTS, AND OUR FREEDOMS. MANY COUNTIES STAND READY TO ASSIST. WE ARE THE CLOSEST GOVERNING ENTITY TO THE LAND AND THE PEOPLE. WE ARE MOST AFFECTED BY THE DECISIONS. WE KNOW THE AREAS, THE HABITATS, THE ECONOMY, THE CULTURES, AND THE PEOPLE. GIVE US THE OPPORTUNITY TO BE MORE INVOLVED IN THE PROCESS, NOT JUST AS AN OUTSIDE INTERESTED PARTY, BUT AN INTEGRAL PART OF THE PLANNING PROCESS. WE ARE NOT A SPECIAL INTEREST, WE ARE THE PEOPLE'S INTEREST. I BELIEVE WE CAN MAKE A DIFFERENCE.

THANK YOU MR. CHAIRMAN. I GREATLY APPRECIATE HAVING THE OPPORTUNITY TO SHARE MY THOUGHTS AND CONCERNS WITH THE COMMITTEE



## NATIONAL ASSOCIATION OF COUNTIES

## PUBLIC LANDS STEERING COMMITTEE

## PROPOSED RESOLUTION ON AMENDING THE ENDANGERED SPECIES ACT

**WHEREAS**, after 22 years of implementation of the Endangered Species Act, initially a noble idea, there now appears ample evidence of the need for revision of the act when it is re authorized; and

**WHEREAS**, protection of some species has led to substantial loss of jobs and economic hardship and reduced county revenues; and

**WHEREAS**, In many instances, the burden of protection species has fallen on a new property owners, who have been forced to provide habitat without compensation for use of their land and

**WHEREAS**, many of these property owners are farmers who have been prevented from tilling their land or harvesting their crops and have lost needed irrigation water that has been taken to protect species; and

**WHEREAS**, there is no mechanism for funding of this federal mandate in the current law; and

**WHEREAS**, the current Act lacks provisions for a cost/benefit analysis of proposed listings, an independent peer review and other safeguards to protect the integrity of the listing, while recognizing the rights of citizens or agencies impacted; and

**WHEREAS**, because counties depend upon a healthy economy to produce revenues to produce needed services, they have a particular interest in having the Endangered Species Act amended to reduce its negative impact on property rights and the economy, including agriculture.

**NOW, THEREFORE BE IT RESOLVED**, that the National Association of Counties ask the Congress to amend the Endangered Species Act to provide:

1. A recognition that if it is in the national interest to protect species, then it must be a national priority to pay for the implementation of the Endangered Species Act through Congressional appropriation.
2. A process consistent with processes applicable to other public projects of national interest which would require the following:
  - a. Applications for listing shall include a complete map of critical habitat, a recovery plan and an economic and environmental impact analysis of costs and benefits associated with a listing.
  - b. Consideration of applications must include independent peer review, local public hearings, individual notification, equal access to judicial review and consideration of costs and benefits associated with a listing.
3. Protection of private and public property rights
  - a. Prior to a listing, no action shall be taken to restrict or interfere with

the use of private or public property.

b. Following a listing, no action shall be taken to diminish the use of property until full compensation and due process have been provided.

**BE IT FURTHER RESOLVED** that local government's land use authority should be recognized and delegation of implementation of the Act should be allowed at the state government level to avoid redundancy and to enhance coordination between state and federal government.

Adopted by the Public Lands Steering Committee May 18, 1994

Adopted by the Agriculture and Rural Affairs Steering Committee May 18, 1994

Adopted by the NACo Board August       , 1994 (Pending)

TO: NOEL WILLIAMS  
LINCOLN COUNTY, MONTANA

Some of our concerns regarding the listing of salmon as threatened or endangered are as follows:

- \*Reduction of 25% Funds for roads and schools:  
Current projections of reduction amount to less than half of current revenue
- \*Loss of timber and mill jobs:  
A reduction of half of timber related jobs
- \*Effect on local business:  
Where timber is one-third of our economy a half reduction will have a serious impact
- \*Loss of tax base:  
Unemployed people cannot afford homes and pay taxes
- \*Grazing leases:  
A large number of ranchers need federal grazing leases to sustain their operations. Loss of part or all of their leases will put some of them out of business. Also, these leases contribute substantially to the over-all value of their private property and in turn will devalue those properties for ad valorem tax purposes
- \*Drawdown:  
Using Idaho water for a fish flush may even be illegal or at least a taking of rights belonging to Idaho citizens for recreation and agricultural uses

FROM: IDAHO COUNTY, IDAHO.

DRAFT

## ESA Outline for Noel Williams

## Impacts on Western Montana from ESA Salmon Listings

The federal operators of the Columbia River system have altered operations of the river in an attempt to improve conditions for listed Snake River salmon. These operational changes have taken many forms, ranging from direct releases of water from reservoirs for fish flow augmentation to shifts in power production strategies to shifts in flood control responsibilities. Due to the complexity of the integrated hydropower system, and due to a conspicuous lack of a hydrologic accounting system that earmarks the purpose for water releases, it is difficult to pinpoint which operations are a result of fisheries demands. However, in the case of western Montana reservoirs, (i.e. Libby and Hungry Horse), a comparison of historic operations to recent operations shows an alarming trend that is no doubt due to ESA listings and other actions purported to help lower river fish.

Three graphs are attached that demonstrate the change in operations. The first graph shows the volume runoff of the Columbia River as measured at The Dalles. It shows the variability of water supply. Note the wet and dry years. Recent years have been dry, but are clearly not the driest, even on this short record. The second and third graphs show Hungry Horse and Libby reservoir operations. These graphs plot for each year the maximum elevation achieved (refill elevation), the minimum elevation (draft point) and the recommended draft point as specified in the Northwest Power Planning Council Fish and Wildlife Program. The trend at both projects is obvious, deeper drafts and more frequent refill failures (and refill failures by a wider margin). Again reviewing the runoff graph it should be noted that we are in a dry period. However, dryer years occurred in the past with less extreme operations of the hydro system. In fact, since those historic dry years, more water storage has been added to the system (dams in Canada). More storage should result in less extreme operations at other projects.

Assuming that ESA actions are driving the hydropower system changes, we must look at the implications of these changes to western Montana.

Impacts to western Montana can be looked at from three perspectives:

- 1.) Biological,
- 2.) Financial and
- 3.) Equity

**Biological:**

Increased flows for salmon/sturgeon have lowered the frequency of refill for both reservoirs. Lower refill, during periods of extended drought results in deeper reservoir drafting in subsequent years (and eventually more refill failures). This has negative biological consequences for aquatic communities that depend on the reservoir.



Food webs are disrupted and diminished (reduced primary production, i.e. less plankton, reduced terrestrial insect deposition, i.e. smaller surface area less bugs fall on water, and reduced benthic production, i.e. less bottom based aquatic bugs produced because of dewatering the shorelines). Biological diversity is compromised. Access to spawning tributaries is reduced.

These impacts manifest themselves as smaller populations of important fish such as native Westslope Cutthroat Trout and Bull Trout. Plus large expanses of dewatered shoreline negatively impact bird populations such as eagles and osprey which feed on the fish, geese and ducks which nest on the shores and others that utilize these habitats. Fur bearers such as mink, beaver and otter are also exposed to degraded or lost habitat.

Other fish populations such as Kokanee are not only impacted by reduced food supply, but are also literally swept out of the project. This process is referred to as entrainment. Historically during the spring and summer time operations releases from the reservoirs were at or near minimum outflows. Increased flows during this period now increase the likely hood of entrainment problems for Kokanee.

Increased spring and summer flows also have the potential to impact the success of spawning Rainbow trout in the river reaches below the dam. Flows can scour redds, i.e. wash them away if they are increased after the trout have spawned at lower flows. Alternatively drops in flows can dewater redds if the trout have spawned at higher flows.

#### Financial:

Changes in the operation of the hydropower system have reduced its efficiency. As a consequence the price of power has increased. Increased expenses to implement ESA actions have also been passed along to the ratepayer. This financial burden is troublesome to the people of western Montana.

Increased energy costs influence the profitability of a number of businesses in the area. Lincoln County, for example, is already troubled with high unemployment rates. The recent closure of a large lumber mill can also be related to log supply problems that in part also stem from grizzly bear ESA issues.

Changes in reservoir operations have also negatively impacted tourist related businesses in western Montana. Empty reservoirs with poor or non-existent access and depleted fish and wildlife populations are not the calling cards that tourist seek.

#### Equity:

The people of western Montana view the alternations to the hydropower system with great skepticism. Little to no scientific evidence has been presented that justify the changes as beneficial to the ESA species. Little or no effort has been made to balance these purported benefits with the known biological losses experienced here in Montana and likely elsewhere. As a result concerned citizens here will be forced to file additional ESA petitions to protect species in Montana from actions taken to protect ESA species in other regions. There appears to be no mechanism to break this vortex process.

It also appears that other equally effective actions for protecting ESA salmon stocks are not being aggressively implemented. Montana's water is the farthest from the problem, but has been some of the first taken for fish flows. No significant amounts of

Idaho, Washington, or Oregon irrigation water has been allocated to fish flush efforts. While Montana reservoirs provide millions of acre feet with no compensation, irrigation provides only a few hundred thousand acre feet but with monetary compensation.

While Montanans banned bull trout harvest at the first indication of declines in species health and abundance, commercial and Indian harvest still takes ESA salmon. Montana is forced to endure diminished habitat and suitable conditions for resident fish at great financial and recreational expense while salmon industries are allowed to take ESA fish. This is not equitable.

Industries and population centers in the immediate vicinity of the problem species should not be allowed to export the environmental consequences of their lifestyles. Areas such as western Montana, that have no ocean going salmon, never have, nor never will, should not be sacrificed while the factors for salmon decline are allowed to continue.

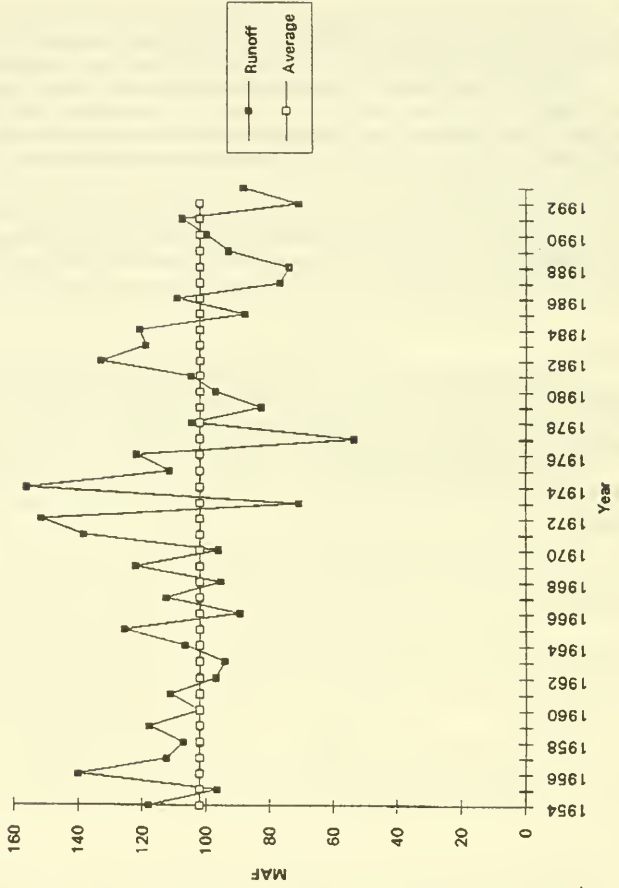
#### Summary:

If the Endangered Species Act was intended to protect the environment, its intent is unfulfilled if actions are allowed to protect one native species at the expense of another. Actions should be focused at the immediate root of the problem, not exported to other regions because of political expedience.

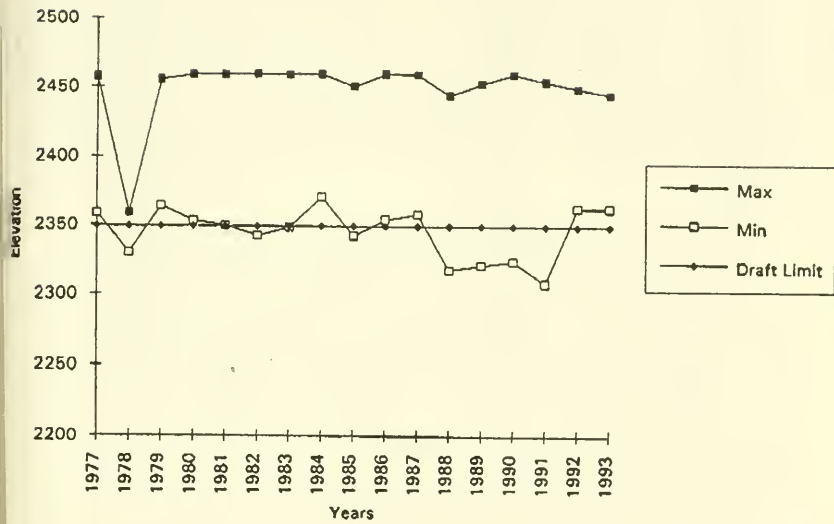
A check and balance system must be crafted to assure that actions taken to protect an ESA species are effective for the species and not detrimental to other aspects of the ecosystem.

RUNOFF.XLS Chart 1

Runoff At The Dalles

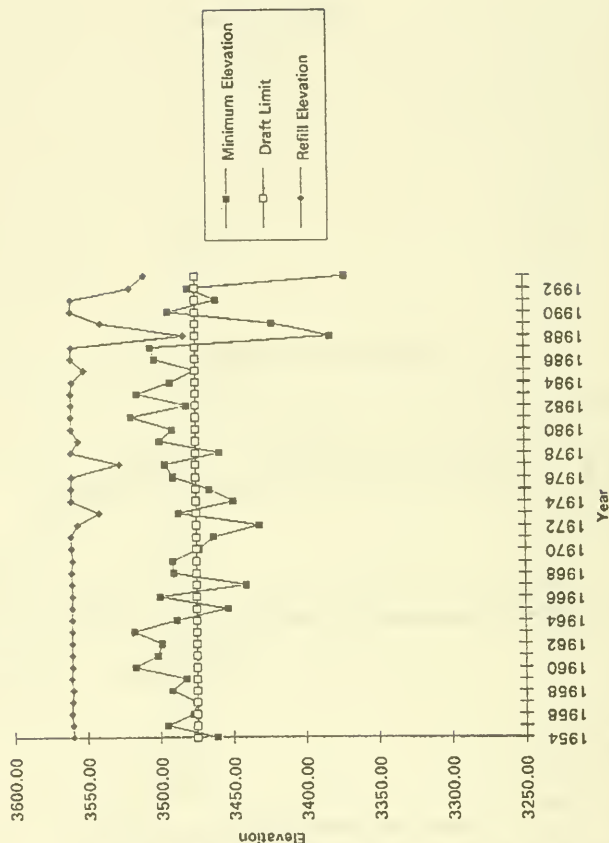


Libby Reservoir Operations





# Hungry Horse Operations



R. TED BOTTIGER  
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## **Testimony of the Northwest Power Planning Council before the Committee on Environment and Public Works United States Senate July 23, 1994**

Good morning, Senator Baucus, and thank you for the opportunity to testify at this hearing on reauthorization of the Endangered Species Act. I appreciate the opportunity to comment on the Council's efforts to restore salmon runs while balancing these efforts against the needs of resident fish and wildlife elsewhere in the Columbia River Basin, including western Montana. In my testimony I will comment on the Council's Strategy for Salmon, the impact of the Endangered Species Act on the Council's salmon restoration efforts and the relationship of the Endangered Species Act to other legal mandates that concern fish and wildlife in the Columbia River Basin.

I would like to begin with several observations about how the Endangered Species Act is being implemented in the Columbia River Basin today. First, perhaps the most visible manifestation of the Act in our region today is the recovery plan recommendations for Snake River salmon that were developed by a team appointed by the National Marine Fisheries Service. These recommendations were submitted to the Fisheries Service in May. It will be several months, at least, before the Fisheries Service completes a recovery plan. The recovery plan recommendations are not being implemented, but the region *does have* a program in place that is being implemented to enhance all salmon stocks in the Columbia River Basin, including those Snake River runs that are the focus of the recovery team's recommendations. It is the Council's Strategy for Salmon, and I will discuss the strategy and compare it to the Recovery Team's recommendations later in my testimony.

Second, we have been asked whether the Recovery Team's recommendations will lead to the recovery of listed stocks. As I am sure the team would concur, there are substantial biological uncertainties that make it impossible to answer that question with certainty. Full implementation of the Team's recommendations and the Council's salmon strategy provides the best hope not only for recovery but for rebuilding to levels that will support a sustainable fishery. It is important to note, however, that the measures in both plans likely will not be sufficient, by themselves, to recover the listed stocks or rebuild Columbia Basin salmon runs to the point that the region once again can enjoy the benefits of sustainable fishery resources. As I will discuss later in my testimony, the Council will be reviewing a number of additional salmon survival measures this summer and fall.

Third, the Council believes that a salmon rebuilding plan must be designed to improve salmon survival at all stages of the salmon's life cycle. In that, we concur with the Recovery Team. We believe, however, that an effective effort must also go beyond the immediate listed stocks if we are to ever get off the Endangered Species Act treadmill. In addition, we have other legal mandates including tribal treaty rights and the rebuilding obligations of the Pacific Salmon Treaty with Canada that must be addressed in the Columbia River Basin. These will require measures beyond those needed to remove listed salmon stocks from the Endangered Species list.

Many of the salmon runs in the Columbia River Basin are in deep trouble despite substantial recovery efforts to date. Arguably, the stocks that are in the worst condition are those in the Snake River that are being protected under the Endangered Species Act. This year fewer than 1,000 naturally spawning spring chinook salmon are expected to return above Lower Granite, and the outlook for summer and fall chinook is similarly disastrous.

But the combination of impacts that brought the Snake River runs to within a few steps of extinction are not unique to the Snake River. They are the same conditions that have damaged salmon runs throughout the Columbia Basin. We know there are many reasons for the decline of these runs, some human-caused, others not. The impact of dams, historic overfishing and poor hatchery practices, for example, can be blamed, and so can damage to spawning and rearing habitat. Much of the reduction in this year's runs may be attributable to the seven-year

drought in the Columbia Basin and to very poor feeding conditions in the ocean. But a successful recovery program must be able to withstand unfavorable natural conditions -- just as the runs were able to withstand adverse natural conditions when they were healthy. If it doesn't, the runs will be lost. The runs are declining despite substantial regional efforts during the last 12 years to improve their survival. Twelve years is only about three generations of salmon, and so it may be too soon to gauge success.

We think it is important to take a broad view in salmon rebuilding efforts in the Columbia River Basin and not focus narrowly on the Snake River stocks. Petitions have been filed to protect fish stocks elsewhere in the Columbia River Basin under the Endangered Species Act. To us, this emphasizes the need for coordinated, basinwide recovery efforts. The Endangered Species Act imposes a recovery planning process that is something like emergency surgery. To attack a problem that is so wide-ranging, the region needs a broad approach -- a holistic health care plan rather than emergency surgery to aid specific stocks.

Fortunately, the Northwest Power Act of 1980 gives us the opportunity to address the decline of salmon populations regionwide. Through this law, which created the Northwest Power Planning Council, the region developed a comprehensive program to protect and rebuild salmon and steelhead populations basinwide. It is the Columbia River Basin Fish and Wildlife Program and, particularly, that component of the program known as the "Strategy for Salmon." We completed it in late 1992, and it is being implemented.

We believe the Strategy for Salmon is compatible with at least five legal mandates that our region is attempting to fulfill. The first is the Northwest Power Act. The second is the Endangered Species Act. The third is our nation's responsibility to Columbia Basin Indian tribes under the treaties of 1855. The fourth is our nation's obligations to rebuild naturally spawning salmon runs under the U.S./Canada Pacific Salmon Treaty of 1985. The fifth is the Clean Water Act.

Efforts on all these fronts can and should proceed simultaneously and in a coordinated way. None of these mandates is less important than any other. They



all aim to protect and enhance fish and wildlife populations in the Columbia River Basin, albeit to different levels.

Our Strategy is comprehensive, in that it includes measures designed to improve salmon survival at every stage of the life cycle. It is based on the best available science, as required by the Northwest Power Act. Both the Council and the Recovery Team faced the difficult task of sifting through a considerable amount of data, analyses, judgments and opinions to identify the needs of salmon. The Team's mission was to develop an Endangered Species Act recovery plan that will rebuild and ultimately delist the Snake River sockeye and chinook populations. The goal of the Endangered Species Act is self-sustaining, but not necessarily harvestable, populations.

The Council's mandate under the Northwest Power Act is broader: to protect and enhance all salmon stocks in the Columbia River Basin without damaging resident fish or wildlife populations and while affording the region an adequate, economical, affordable and reliable electric power supply. The Northwest Power Act makes clear that our fish and wildlife program must complement the activities of the state fish and wildlife agencies and the region's Indian tribes. These entities clearly are interested in harvestable, not merely self-sustaining, fish and wildlife populations. This mandate is reflected in our Strategy, which is a major component of the 1994 Columbia River Basin Fish and Wildlife Program. The Strategy aims to restore salmon populations throughout the Columbia River Basin to levels that will permit the region to obtain the benefits of sustainable fishery resources.

We remain convinced that it is important for the region to focus on this broad goal and address all salmon stocks in the Columbia River Basin -- not just those listed or proposed for listing under the Endangered Species Act. The Northwest Power Act specifically requires us to include measures in our fish and wildlife program that we determine will "complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes."<sup>1</sup> We interpret this direction to mean that our program

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<sup>1</sup> Pacific Northwest Electric Power Planning and Conservation Act, Public Law 96-501, at Section 4.(h)(6)(A).

should be designed to protect all fish and wildlife populations in the basin and rebuild the declining stocks to harvestable numbers.

In our two-year effort to develop the Strategy, we conducted numerous hearings and consultations, evaluated substantial volumes of scientific and technical analysis and identified all immediate and longer-term actions we believed would be needed to rebuild Columbia River salmon populations to harvestable levels. Because the Recovery Team used the same information, it is gratifying and reassuring that the result of the Team's extended process in devising the recovery plan is largely consistent with the conclusions we reached in our proceedings. We believe it is vital that the region continue to implement expeditiously the provisions of the Council's Strategy.

The Strategy is a living document, as the Northwest Power Act gives us the opportunity to react fairly quickly to changing conditions and new, relevant information. As I said earlier, the Act requires that our program be "based on, and supported by, the best available scientific knowledge."<sup>2</sup> To this end, we embrace the concept of adaptive management, which means learning by taking action in the face of uncertainty, but taking action in a way that allows you to learn as you go along. In this way, as events and knowledge change, the Council has the opportunity to make changes in the program.

This summer we are embarking on a public process that could lead to changes in the Strategy that reflect new information. In the Strategy, we said the existing measures would not be enough to protect all weak runs or rebuild to levels that would provide the benefits of sustainable fisheries. Accordingly, we called for detailed reports to be prepared on a variety of measures to improve passage of anadromous fish in their mainstem migration, including reservoir drawdowns, potential new Snake River Basin storage facilities, water efficiencies, transactions or other nonstructural measures to secure more Snake River Basin water for anadromous fish, biological rule curves to protect resident fish and wildlife populations associated with Libby and Hungry Horse reservoirs in Montana, and other matters.

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<sup>2</sup> Section 4.(h)(6)(B).

All of these reports grew out of amendment recommendations that were submitted in the process of developing the Strategy. In the Strategy, we committed to review those reports in 1994, as well as any additional new information, and amend appropriate measures into the program. And there is new information, such as research on river flows and salmon migration in the mid-Columbia River and a scientific peer review of transporting juvenile fish downstream past the dams.

Meanwhile, other issues have arisen in connection with the National Marine Fisheries Service's 1993 and 1994 biological opinions, the Recovery Team's initial recommendations last October, federal court proceedings, and other matters. We want to be sure we take these matters fully into account in our fall rulemaking process. We have invited recommendations regarding all measures for anadromous fish in the Strategy. These recommendations are due to us by August 15. The Council invites Congressional participation as we work toward what surely will be a controversial decision.

We need to coordinate our planning effort with the National Marine Fisheries Service as it devises a recovery plan for Snake River salmon from the recommendations provided by the Recovery Team. We need to ensure that while the Fisheries Service develops its plan, the region continues to implement the Strategy for Salmon. We hope that as the result of our fall rulemaking and the Fisheries Service's work on its recovery plan, our two agencies can come closer together on the best measures to protect all fish and wildlife in the Columbia River Basin.

### **Brief comparison of the Recovery Plan and the Strategy**

For purposes of this hearing and your inquiry into the impacts of the Endangered Species Act, I think it would be helpful to compare the Council's Strategy for Salmon to the Recovery Team's recommendations regarding Snake River salmon. For the most part, they are similar. For example:

- Both plans call for improved river flows.

- Both plans call for more water from the Snake River Basin and for better research on flows and the benefits of flows.
- Both plans agree that transportation of salmon in barges provides protection for some populations in poor water conditions.
- Both plans say transportation efforts and facilities need to be improved, as do bypass systems at the dams.
- Both plans largely agree on the need to protect and improve salmon spawning and rearing habitat.
- Both plans say harvest and predation should be reduced. Both also agree that alternative harvest techniques are necessary.
- Both plans call for improved hatchery production and for careful experiments to rebuild naturally spawning stocks.

In fact, there are far more similarities than differences. But there *are* differences. I will mention four here briefly, and then I will expand on them later in my testimony.

- First, the Council is concerned that the Salmon Oversight Committee proposed by the Recovery Team would duplicate a measure in the Strategy for Salmon and be too focused on the Endangered Species Act. We think it is important to avoid adding layers of process to the salmon recovery effort.
- Second, the Recovery Team initially proposed that the region choose either a transportation strategy or an inriver migration strategy to improve survival of juvenile fish as they migrate to the ocean. The Strategy says that while there is much regional disagreement on the benefits of transportation, it is one of the few tools the region has to improve salmon survival in the near term, especially in low water conditions. In the longer term, depending on results of continuing evaluation, transportation may be useful in the mix of techniques the region will employ to decrease salmon mortality associated with migration through reservoirs.



- Third, the Recovery Team omitted a John Day Reservoir drawdown. It is one of the additional measures the Council included in the Strategy for Salmon. While we haven't made a final decision, we believe it is not prudent to eliminate any option at this time. In the Strategy, we asked for additional study of the John Day drawdown, and we will take up the issue in our fall rulemaking.
- Fourth, I think it also is important to note that our plan is *in place*, and it is *being implemented*. It is important that the region continue to implement the Strategy while the Snake River salmon recovery plan is being developed.

The Recovery Team correctly notes there is no silver bullet for recovery of salmon populations and, accordingly, it is not surprising that their plan indicates there are few new ideas for recovery. We reached a similar conclusion -- that no single action would produce the results desired. In fact, we earnestly believe that improvements at all stages of the salmon life cycle are required or the results will be disappointing.

For these reasons, it is logical to expect that our Strategy and the Recovery Team's recommendations to the National Marine Fisheries Service overlap in many instances. That, in fact, is the case and, in what follows, I will comment on many of those similarities and indicate some differences that appear to grow largely out of our differing legal mandates and goals.

### **Goals of the Recovery Plan and the Strategy**

The recovery plan identifies recovery goals for Snake River sockeye and spring/summer and fall chinook. We see no reason to differ with the Team's conclusion that achieving the recommended levels of adult returns could satisfy the delisting requirements of the Endangered Species Act. Of course, as you can see from the table, the Council's goals for Snake River spring and summer chinook are substantially higher than the delisting goal of the Recovery Team.

### **Recovery Team delisting criteria compared to Council targets**

<b>Spring/summer chinook</b>	
<b>Council</b>	<b>Recovery Team</b>
50,000 Spring/20,000 Summer	26,200

<b>Fall chinook</b>	
<b>Council</b>	<b>Recovery Team</b>
1,000	1,000

<b>Sockeye</b>	
<b>Council</b>	<b>Recovery Team</b>
No goal; emergency breeding program	1,000 in any one lake

This is not surprising given that the Council's goal is to go far beyond Endangered Species Act requirements and provide substantially increased and harvestable populations for the Snake River and elsewhere. Regarding fall chinook, the Council's rebuilding target and the Team's interim escapement goal are the same -- 1,000 fish.

The Council's Strategy emphasizes additional measures that, in our view, will be required to further improve salmon survival. These additional measures, which are discussed below, are designed to ensure that the Strategy addresses all stocks in the Columbia River Basin. If successful, future petitions and Endangered Species Act proceedings could be unnecessary.

The Council's Salmon Strategy also calls for the development of goals and rebuilding schedules for salmon stocks not currently listed under the Endangered Species Act. We believe this additional work will help the region identify actions needed to rebuild all salmon stocks in the basin to levels beyond those that trigger Endangered Species Act petitions and listings.

#### **Framework**

The Council is well acquainted with the dilemma the Team faced in selecting recovery measures and relating them to a recovery goal. In the Strategy, we asked

the state, federal and tribal fish managers to provide us with their goals and objectives for the basin's salmon stocks. Clear goals and objectives are critical to the successful implementation of salmon recovery measures. To date we have not received this information, and we are encouraging the managers to provide it expeditiously.

While it is possible to describe individual measures, it is very difficult to say whether individually or collectively those measures achieve any given objective because our knowledge of this complex ecosystem is limited. The Team noted these difficulties in its discussion of economic issues. Nevertheless, we have found over the past 12 years that a large collection of recovery measures unaccompanied by an analytical framework poses real difficulties. Implementing agencies have a difficult time sorting out priorities; policy makers have little sense of scale or direction, and the public is left to wonder what decision makers believe the list of measures is likely to accomplish.

An explicit analytical framework also is essential in identifying crucial knowledge gaps and establishing a basis for monitoring and evaluation. The current reality is, as the Team suggested, that we must make these decisions using a strong measure of professional judgment in the face of considerable uncertainty. If we are ever to put matters on a stronger scientific footing and make efficient use of available information, the region must work toward greater analytical rigor.

To check the plausibility of our rebuilding goals, we used life cycle models and analyzed varying assumptions to determine their potential effect on model results. While we recognize the data inputs are often highly uncertain, we found the models to be useful tools in decision making. For this reason, we are continuing to urge all parties to work on further refinements of analytical methods and improved data collection, and we encouraged the Team to endorse these efforts.

### **Institutional Reform**

The Recovery Team expressed a common concern about salmon management and Columbia River management. Numerous jurisdictions, groups,

committees and processes are in place dealing with various aspects of Columbia River management. The potential for fragmentation, lack of accountability, redundancy and confusion is high. We share the Team's concern and, in the Strategy, urged Bonneville to establish a central coordinating forum for implementation of the overall Strategy. While this forum has yet to be established by Bonneville, we continue to believe that improved coordination at the policy level is essential, and Bonneville has agreed to move forward on this issue.

The Council shares the Team's conviction that independent scientific evaluation is essential. We believe the Independent Scientific Group called for in the Strategy will, when established by Bonneville, provide important evaluations of overall effectiveness, help the region focus or, if necessary, redirect its efforts, and generally improve the scientific foundations of the salmon program. We are discussing the charter and composition of the Independent Scientific Group with Bonneville, the fisheries agencies, tribes, utilities and others. We encourage the Team to endorse this important independent scientific undertaking.

Because of our concern about the complexities of all the current processes, we urged that any institutional reforms be designed to fit with existing organizations and that all efforts be made to avoid creating additional layers of process solely for Endangered Species Act compliance. We are particularly concerned that the Team's proposed Salmon Oversight Committee duplicates activities of the Northwest Power Planning Council and the previously mentioned Independent Scientific Group. Additionally, such a committee could further diminish the role and influence of the Northwest states. The region has a long way to go in salmon recovery, but establishing yet another set of procedures is not the answer. Existing procedures must be streamlined so that the Endangered Species Act, the Northwest Power Act, the federal government's trust obligations to Indian Tribes and the rebuilding commitment of the Pacific Salmon Treaty can be addressed in a coordinated and efficient manner. Improved federal, state and local coordination is essential.

We appreciate the work of the Recovery Team, and we are ready to work with the Fisheries Service to ensure effective implementation of salmon recovery measures. But in order to be an effective partner, we need to be involved in consultations with the federal agencies under Section 7 of the Endangered Species



Act. These consultations -- on dam operations, hatcheries, harvest, habitat -- concern impacts on salmon that we directly address with measures in our Strategy for Salmon. The states, through the Power Planning Council, simply must be given a meaningful, participatory role in these consultations. The Governors have requested this, and it could be done with the stroke of a pen.

### **Habitat and Production**

In the habitat and production areas, we find the Recovery Team's recommendations compatible with our Strategy. The Team's call for uniform habitat standards fits very well with the Council's habitat performance standards. The goal of maintaining high-quality habitat while initiating actions to improve lower-quality habitat is also consistent with the Strategy.

The Team urges preparation of a habitat assessment within six months using existing information. We believe that the recently completed Columbia River Basin Subbasin Plans and the Integrated System Plan should provide most of the information needed for this exercise. These plans were prepared under Council contract in the late 1980s and, while the Council has noted inconsistencies in the level and quality of habitat data, the plans were based on the best data existing at the time.

The Team also endorsed the initiation of long-term subbasin habitat management. This is consistent with the Council's direction. It is clear that the implementation of individual habitat projects, without reference to key factors limiting salmon production, likely will produce disappointing results or could be unsuccessful. Coordinated and cooperative habitat improvement is necessary and consistent with the Team's recommendations. The Council's Strategy calls for a comprehensive watershed management approach in several model watersheds around the Columbia River Basin. Our expectation in these watersheds is that focused federal, state, local and private efforts are the best hope for significant habitat improvements. In a number of areas, the Team's recommendations are more specific than the Council's Strategy, and we believe those will help further expedite habitat protection and improvement.

Our Strategy recognizes the importance of involving private property owners in improving salmon spawning and rearing habitat. We designed the model watersheds program in the Strategy around the concept that this work can be accomplished cooperatively by land owners and government, particularly the Soil Conservation Service (SCS). The SCS is providing valuable assistance in this effort, which is under way in Idaho, Oregon and Washington. Through the model watersheds, landowners are actively participating in salmon rebuilding activities. Landowners need assurance that effective actions on their part will limit their exposure to penalties under the Endangered Species Act if a stock that spawns on their property is listed.

In the production area, we share the Team's concern that hatchery practices and policies are fragmented and in need of improvement. Under the Strategy, we have charged a team of hatchery operation specialists (the Integrated Hatchery Operations Team) to develop basinwide practices that should help improve hatchery operations and policies. Significant research efforts also are underway in the areas of fish disease, hatchery effectiveness and hatchery impacts on naturally spawning stocks. One of the two production subcommittees of the Salmon Oversight Committee proposed by the Recovery Team appears to duplicate efforts of the Integrated Hatchery Operations Team. In our comments to the Recovery Team on its draft recommendations, we suggested it would be helpful if their proposals were recast to fit with these ongoing efforts, rather than create an additional committee.

The Council sought to initiate a number of careful supplementation experiments, but the role of supplementation in rehabilitating naturally spawning populations is much debated. In the past, we have sought clarity from the National Marine Fisheries Service on the point at which supplementation or captive broodstock programs should be implemented in order to conserve naturally spawning populations. As yet, the region has achieved no clear answer on this issue.

Lacking clear direction from the Fisheries Service, the Council has assumed that supplementation will be needed to rebuild Snake River fall chinook populations. We have called for expenditure of funds to determine habitat requirements, and a considerable amount of planning has been undertaken for a

supplementation project sponsored by the Nez Perce Tribe. To date, however, we have received no assurances that these activities can proceed. While we have seen some promising increases in the number of fall chinook passing over Lower Granite Dam in the past three years, rebuilding is not assured. Runs this year are expected to be very low. In short, the region needs immediate guidance on the role of supplementation and captive breeding programs. Past experience indicates that implementation of these activities takes a considerable amount of time, particularly in the current climate of uncertainty.

### **Downstream Survival**

Improving downstream survival has proved to be the most controversial and most expensive area of our Strategy. Like the Team, we struggled with substantial biological uncertainty, generally weak data and diametrically opposed judgments and opinions. The Strategy called for investigation of key biological uncertainties, particularly the relationship between river flows, velocity of the current and salmon survival.

Following direction in the Strategy, last fall the Council contracted with Oak Ridge National Laboratories for an independent synthesis of available information on the relationship between flows, water velocity, smolt travel time and salmon survival. The author, Dr. Glenn Cada, concluded, in part: "Despite problems with the existing data sets, the general relationship of increasing survival with increasing flow in the Columbia River Basin still appears to be reasonable." <sup>3</sup>

While Dr. Cada was conducting his review, the Recovery Team issued its draft recommendations, which started that "[t]he Team accepts the evidence that smolt travel time increases and survival decreases when flows are as low as they were in 1973 and 1977, but the evidence is less clear on what flows are needed for high survival." <sup>4</sup> Following the Cada report, the National Marine Fisheries Service

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<sup>3</sup> Cada, Glenn F., "Review of Information Pertaining to the Effect of Water Velocity on the Survival of Juvenile Salmon and Steelhead in the Columbia River Basin," Environmental Sciences Division, Oak Ridge National Laboratory, Page 56. This report is available from the Council's central office by telephone, 800-222-3355. Please request Document 94-05.

<sup>4</sup> Draft recovery plan, P. VIII-27.

issued a draft biological opinion regarding operation of the Columbia and Snake River dams. The opinion included an appendix that outlined the evidence for a positive relationship between river flows and fish survival.<sup>5</sup>

In late February 1994, the Council conducted a technical workshop with scientific experts to discuss areas of agreement and disagreement concerning flow/velocity-survival relationships and also ways to test these relationships. This workshop helped to frame the nature of flow/velocity and transportation hypotheses the Council is considering amending into the fish and wildlife program. The Council is stating these working hypotheses in order to provide direction and impetus to high-priority scientific evaluation of these issues. The necessity for additional scientific effort on these issues has been frequently expressed over the years in the Council's program, and elsewhere. One of the primary impediments to progress has been the difficulty of framing the question to be answered and securing agreement on methods to evaluate the flow/velocity and transportation survival relationships. In our flow/survival hypotheses rulemaking, we propose to pose the questions so that they can be openly addressed. We conducted public hearings around the region and took public comments on the proposed hypotheses through this month. We are scheduled to make a decision in late July.

Meanwhile, the Team's draft recovery plan proposed that, to improve downstream survival, the region should select either a transportation or in-river migration path as soon as possible. As things stand, the Council has not found it prudent to choose one particular approach to downstream migration over another. The Team's final recommendations are broader, urging that if smolt collection and transportation from the dams and in-river migration without drawdown of the lower Snake River reservoirs does not result in significantly improved survival, then the region should consider implementing other options -- such as drawdowns or a new smolt collection facility at the head of Lower Granite reservoir.

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<sup>5</sup> Appendix B, of the Biological Opinion on 1994-1998 Operation of the Federal Columbia River Power System, "Interim Standard for Target Flow Ranges for Evaluation of Operation of the Federal Columbia River Power System Between 1994-1998," February 1994, National Marine Fisheries Service, Northwest Region, 7600 Sand Point Way, Seattle, WA, 98115.



Available data do not point to either transportation or in-river migration as the sole means to sustain or rebuild populations. Benefits from improvements in river passage or transportation are uncertain, especially for naturally spawning stocks. In view of these considerations, we called on the region to put in place an immediate, multi-faceted program of increased flow and velocity, improved bypass, increased spill, improved transportation and predator-control measures. We believe these immediate actions could minimize the risk of failure and improve salmon survival. However, our analysis also indicates that they will be insufficient -- even when taken together with significant improvements in other areas of the life cycle -- to protect all weak stocks or reach the rebuilding goals set by the Council.

Accordingly, we said that as a matter of urgency the region should make all necessary preparations to implement expeditiously a number of additional measures: drawdowns of lower Snake River reservoirs, additional water storage in the Snake River Basin and improved water-use efficiencies. We urged that the region proceed on the expectation that these measures will be implemented unless shown to be structurally or economically infeasible, biologically imprudent, or otherwise inconsistent with the Northwest Power Act. The Council initiated two major analytical efforts on drawdowns. First, the Council established a drawdown committee, which oversees the Corps' investigation of John Day and Lower Snake drawdowns. Second, the Corps, National Marine Fisheries Service and others are designing a biological test of the lower Snake drawdown, tentatively scheduled for 1996. The Council intends to review the results of these intensive planning efforts this year.

These additional measures could be expensive and controversial. We cautioned that a business-as-usual approach means the region will face too many unnecessary delays in the implementation of these measures, unless ongoing evaluation precludes such implementation. The measures could take years or even decades unless the region adopts more creative and aggressive means to obtain required evaluation and monitoring information, and make the essential preparations for action. It is important to keep in mind that, without these measures, it appears highly unlikely that the region can rebuild salmon populations to the levels called for in the Council's Strategy.

We are encouraged that the Recovery Team recommended many of the immediate downstream survival improvements called for in our Strategy. The Team's recommendations for continued flow augmentation, improvements in transportation and careful assessment of bypass alternatives are compatible with our Strategy and fit well with previously discussed efforts underway in this area. However, the Team is equivocal on certain improvements. We believe the region needs to overcome institutional inertia on additional mainstem survival measures if we are to get off the Endangered Species Act treadmill.

The Team omitted a measure that is in our Strategy -- investigation of the drawdown of Lake Umatilla, the reservoir behind John Day Dam. Because the region has not chosen an exclusive transportation path over in-river migration, the ability to operate John Day Dam at its minimum operating pool could benefit non-transported Snake River salmon and Columbia River migrants as well. Omitting John Day drawdown from a salmon rehabilitation effort at this time is inappropriate.

We are aware of -- and our analysis includes -- concerns about the biological and economic effects of a John Day drawdown. We have urged that the economic effects be anticipated and mitigation measures be in place prior to implementation and that a number of analyses be underway addressing biological concerns. These were reported to the Council and its Drawdown Oversight Committee in May by the Corps of Engineers in the draft System Configuration Study, Phase One. We are continuing to evaluate the draft report, a massive, multi-volume document, and I am not prepared today to offer you specific comments on the Corps' conclusions. However, the John Day drawdown is one of the issues we will take up in our fall rulemaking.

We also are aware of the Team's interest in surface bypass facilities at the dams. We are aware of the surface bypass concept, and in our Strategy we called for investigation of promising new technologies to improve salmon bypass at the dams. Surface bypass may have promise. We encourage parties to explore it fully, and we plan to take up the matter during our fall rulemaking.

We also have asked for accelerated installation of smolt detection devices at the dams and dam modifications to accommodate increased spill while reducing the potential for gas bubble trauma in the spilled fish.

### **Harvest**

We concur with the Recovery Team that current levels of Snake River spring and summer chinook harvest are very low and appear to have no significant bearing on Snake River population levels. However, both the Council and the Team concluded that fall chinook harvest rates have been too high. The levels of reduction called for in the Strategy and the recovery plan appear similar. The Council and the Team likewise call for no commercial harvest of sockeye below the confluence of the Snake and Columbia rivers, and both request that the tribes continue to restrain the ceremonial and subsistence sockeye fishery. The Team and the Council agree that significant reductions in Canadian interception of Snake River fall chinook salmon are needed. In saying this, we understand the United States will need to reduce its interception of Canadian stocks as well.

The Council and the Team also agree that terminal fisheries and selective fishing gear will be essential. We believe that successful fisheries in the future will occur primarily on stronger, readily identifiable runs of salmon in areas where mixed stock harvest impacts can be avoided. The transition to these types of fisheries can be relatively smooth if demonstration projects are initiated in the near future.

To reduce gear in ocean and Columbia River fisheries, the Council proposed voluntary measures in contrast to the Recovery Team's call for mandatory license and gear buybacks and the elimination of lower river commercial gillnetting. During the course of its deliberations on the Strategy, the Council accepted testimony urging that harvest allocation decisions be left to the fishery managers. We have been heartened by the willing response of the lower river commercial fishing community on the leasing of their fishing opportunities. For a variety of reasons, the voluntary leaseback program has not been implemented, but the Council intends to review this issue further with fishery managers and Tribal Treaty and non-Treaty fishing interests.

As you know, negotiations under the Pacific Salmon Treaty between the United States and Canada broke down this year. We are aware that the administration attempted to restart the negotiations. In our Strategy, we called for a significant reduction in Canadian interception of threatened Columbia River stocks. We understand this will require a reduction in interceptions of Canadian stocks by fishers in Washington and Alaska. Unfortunately, Alaska, other U.S. negotiators and Canada have been unable to agree on these reductions. For that reason, the important rebuilding goal of the U.S./Canada salmon treaty is in jeopardy of not being met.

### **Predation and Adult Passage**

The Recovery Team's proposals for predator control are similar to, and in some cases more aggressive than, the Council's. We are concerned about predation by northern squawfish and have supported the demonstration project that is evaluating the effects of squawfish removal. Our goal is to reduce the squawfish population by 20 percent. As yet, we do not have evidence that the project actually increases salmon survival, and so it is being pursued as an experimental demonstration.

Meanwhile, the 1994 Northern Squawfish Sport Reward Fishery is off to a fast start. Bonneville recently reported that in May, the first month of the fishery, a total of 13,453 squawfish were taken from the Snake and Columbia, and that is more than three times the amount caught in May 1993. In addition to a \$3 bounty for each fish over 11 inches long, successful anglers can compete for monthly drawings of \$1,000 and an end-of-season drawing next October of \$5,000. The \$25,000 in prize money is not from Bonneville. It's being offered by a Northwest chain of sporting goods stores, and I think that's a real public service.

In addition to squawfish, the Council also is concerned about the possible effects of mushrooming shad populations. We called for additional work on bird and marine mammal predation. The available literature does not indicate non-indigenous fish species (including channel catfish, bass, walleye, and other species) are as significant predators as squawfish, but we believe they need to be evaluated carefully.



**Economics**

The Council shares the Team's concern that predicting biological gains is difficult and, accordingly, that the preparation of cost-effectiveness analyses at this time is problematic. We encouraged parties to continue their work in these areas, however, so that additional information on economic impacts and regional tradeoffs can be developed.

To assist in this effort, we submitted to the Team information we prepared on implementation costs of the Strategy. When the Council adopted the Strategy for Salmon, it attempted to estimate the cost and potential effect on Bonneville's wholesale rates. We estimated that the additional measures assigned to Bonneville could require \$30 million in annual obligations. We estimated that the revenue impacts of the additional flows would average \$70 million a year.

The chart on the next page shows how Bonneville calculates its fish and wildlife costs. The chart identifies the separate elements of revenue impacts of flow and spill decisions. The direct obligations are divided among the various objectives. The 1992 Strategy costs are a portion of the ongoing "Salmon Measures" and "Reimbursement of Corps ... Operations" categories.

(In millions of dollars)

<b>Bonneville Direct Expenses (budgeted obligations)</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>
Salmon Measures	32.9	42.9	39.3	38.6
Wildlife Measures	3.6	16.9	6.5	6.2
Resident Fish Measures	2.4	2.5	4.3	4.3
Operations and Maintenance of Program Projects	0.7	2.3	3.8	4.5
<b>Total</b>	<b>39.6</b>	<b>64.6</b>	<b>53.9</b>	<b>53.6</b>

<b>Fixed Costs</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>
Reimbursement of Corps, Reclamation and FWS Operations <sup>6</sup>	20.5	41.5	43.4	40.5
Interest, Amortization and Depreciation of Capital Projects	39.1	43.2	54.2	60.4
N.W. Power Planning Council <sup>7</sup>	3.8	3.9	4.1	4.3
<b>Total Fixed Costs</b>	<b>63.4</b>	<b>88.6</b>	<b>101.7</b>	<b>105.2</b>

<b>Flow Revenue Impacts</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>
Council 1984 Water Budget <sup>8</sup>	40	40	40	48 <sup>9</sup>
Phase Two Flow Additions <sup>10</sup>	0	35	74	68
ESA Flows	2	0	13	(6)-48 <sup>11</sup>
Revenue Impacts of Lowered Snake and John Day Reservoirs	0	8	25	25
Council Spill Measures	15	15	15	15
ESA Spill	0	5	5	5
1994 Emergency Spill				17
<b>Total</b>	<b>57</b>	<b>103</b>	<b>172</b>	<b>172-226</b>

<sup>6</sup> Includes Corps O&M of fish bypass facilities, transportation program and System Operations Review costs. Includes Lower Snake Compensation Program and Reclamation O&M.

<sup>7</sup> Bonneville calculates one-half of the Council budget as part of its total annual fish and wildlife costs.

<sup>8</sup> Because the 1984 water budget is incorporated into firm planning, Bonneville assumes an annual value of \$40 million.

<sup>9</sup> 1994 includes one-time \$8 million additional water budget cost due to earthquake interruption of DC Intertie.

<sup>10</sup> The value of the Phase Two flow increases is estimated on the net value of the stored water less its value on the market when released. The total includes foregone revenue of operating lower Snake reservoirs to minimum operating pool and John Day to minimum irrigation pool, plus the foregone revenues of Dworshak operations.

<sup>11</sup> Source: Impacts of the 1994-98 NMFS Biological Opinion (draft): Bonneville Power Administration.

In July 1993, Bonneville announced a 15.6-percent rate increase. We estimated at the time that the measures in the Strategy for Salmon likely translated into about one-quarter of that increase -- in other words, about a 4-percent increase for fish. That amount could increase as additional capital obligations are incurred. The impact of the Strategy on retail electricity rates likely was somewhat less than 4 percent, depending on how much utilities choose to pass on their customers. No similar analysis of costs vs. rate impacts or an implementation schedule has been prepared for the measures recommended by the Recovery Team. We are comparing the Team's recommended measures to actions already under way to implement the Strategy for Salmon to ensure as much coordination as possible.

The Strategy is only part of the total regional effort to improve salmon survival. In addition to Bonneville's fish and wildlife program, federal agencies including the Forest Service and the bureaus of Land Management and Reclamation receive appropriations from Congress to improve spawning and rearing habitat for salmon, and the National Marine Fisheries Service receives Congressional funding to pay for screens at the Snake and Columbia dams and for Mitchell Act hatcheries.

The costs of salmon recovery efforts are substantial, but the region also should bear in mind the cost of inaction. Without effective restoration measures, the region stands to lose wild and naturally spawning salmon stocks whose genetic resources may be critical to the long-term sustainability of all salmon runs.

In its final recommendations to the Fisheries Service, the Recovery Team included the following statement, with which we concur:

"Many of the impacts discussed above are negative in terms of social well-being. But the long-run effect of recovery of the Snake River salmon stocks to the level of delisting and beyond would be overwhelmingly positive. Jobs would return; recreational and esthetic benefits would expand; and, most importantly, a priceless heritage of the Northwest would be restored and preserved for future generations."

## Conclusion

We remain convinced that the region must make an aggressive effort to protect and restore salmon populations in the Columbia River Basin. A coordinated, cooperative approach is required, or the region will be forced to react continually to Endangered Species Act petitions and constraints. Our basinwide program is designed to enhance all Columbia River salmon stocks. We appreciate the work of the Recovery Team on listed Snake River salmon populations. We are ready to work with the Fisheries Service to ensure effective implementation of salmon recovery measures in the Columbia River Basin.

Again, I want to invite interested members of Congress to assist us in making the difficult decisions we will face this fall. We want this effort for salmon to turn out like the effort for bald eagles and gray whales. We want to avoid the spotted owl outcome.

Thank you again for the opportunity to testify here today. I would be pleased to answer any questions.

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### Statement of

James M. Baker  
Northwest Salmon Campaign Coordinator  
Sierra Club

before the

Committee on Environment and Public Works  
Hon. Max Baucus, Chairman  
U.S. Senate

at a hearing on

Reauthorization of the Endangered Species Act

Ronan, Montana  
July 23, 1994

Good morning, Mr. Chairman, and thank you very much for the opportunity to testify before this committee on salmon recovery in the Pacific Northwest and the reauthorization of the Endangered Species Act (ESA). For the record, my name is Jim Baker, and I serve as Northwest Salmon Campaign Coordinator for the Sierra Club, staffing our organization's Columbia Basin Field Office in Pullman, Washington. This hearing brings me to your fair state of Montana for the second time in as many weeks, so I am personally as well as professionally grateful indeed for your invitation to this "downstreamer" to appear before this committee today.

### • The Endangered Species Act and the salmon are vital for the Northwest

The Endangered Species Act is a good law that fully merits reauthorization by the Congress. It provides strong but flexible protection of

the most fundamental building block of a healthy environment, and indeed of life itself — the irreplaceable resource of basic DNA. The Act graces our society by codifying the recognition that all creatures and plants have a right to exist and perpetuate their species. The Act also provides flexibility in its implementation to allow people to make a living and maintain a healthy economy. The Act is a contract with future generations to receive a planet bountiful with the diversity of life, not stripped of its creatures and plants, not impoverished due to short-sighted or deliberate acts of humankind.

I personally learned the importance of the Act shortly after its passage when I worked wheat harvest for my uncle on the family homestead in south central Kansas. My uncle, a life-long farmer and an enthusiastic supporter of the Endangered Species Act, pointed out to me that agriculture is first and last in the business of genes, of DNA, of species. "Where would we farmers be," he asked me, "if along with the buffalo, people had wiped out Turkey Red wheat, too?" (All hard red winter wheat grown in the United States derives from Turkey Red.) Where indeed would our nation be if we do not protect ourselves against the annihilation of our most precious economic resource: life itself?

Mr. Chairman, what the bald eagle is to the nation, the salmon is to the Pacific Northwest. Salmon swim at the very heart of our region's culture, our environment, and until recently, our economy. According to one study, even in its currently depressed situation, salmon fishing — commercial, sport, and Tribal — still pumps \$1 billion into the Northwest economy annually, and maintains 60,000 jobs directly.

Sadly these magnificent creatures are slipping dangerously toward extinction, particularly in the Columbia watershed which once harbored the largest salmon runs in the Pacific. When Lewis and Clark spent their bitter winter on the coast, perhaps as many as 40 million adult salmon and steelhead entered the Columbia annually on spawning runs. Before the erection of hydroelectric dams on the Columbia and Snake mainstems, some 16 million fish ran in these waters — virtually all of them wild.

Today the annual spawning run of Columbia/Snake salmon has dropped below 2 million adults, and of these, fewer than 300,000 are wild. Wild salmon and steelhead are absolutely essential because hatchery operators must infuse some wild eggs and sperm into each brood cycle in order to counteract the genetic degradation caused by in-breeding and other inherent ills in artificial production. Without this infusion of wild genes, hatchery production quickly collapses, too. In other words, no wild fish, no salmon at all.

• **Federal agencies have not acted properly or promptly**

As you know, the National Marine Fisheries Service (NMFS) has listed all wild salmon stocks in the Snake River Basin for protection under the Endangered Species Act. Petitions are pending and under status review for all wild steelhead throughout the Columbia watershed, and for summer-run chinook in the middle reach of the main Columbia. Clearly with the decline of salmon, the Northwest faces today the most dire threat yet to our environment, our economy, our Indian American cultures, and our distinctive way of life.

Some would tell this committee that the region's salmon crisis is just another example of why the Congress must gut or outright repeal the Endangered Species Act. We respectfully urge you, Mr. Chairman, to reject this false notion for several reasons.

With salmon specifically and with declining species generally, the crisis comes not with the Endangered Species Act itself, but instead, with the failure of federal agencies to act properly and promptly to implement the Act. For example, despite grave warnings from biologists inside and outside the agency that the ecosystem had already begun to unravel, the U.S. Forest Service in the last decade increased the timber cut in the ancient forests of northern California, and western Oregon and Washington State — plunging the Northwest into the expensive and bitter struggle over the spotted owl.

Now what the Forest Service did to the West Coast timber industry, the Bonneville Power Administration (BPA) and the U.S. Army Corps of Engineers are threatening to replicate for the federal hydropower system in the Columbia watershed. Instead of acting positively and promptly to save the salmon, these agencies that operate the Columbia hydroelectric dams have tinkered and delayed.

For many years now, BPA and the Corps have been staring at the decline of salmon in the Columbia watershed. Back in 1979, NMFS gave active consideration to listing stocks under the Endangered Species Act. This led to the fish and wildlife provisions in the Northwest Power Planning Act of 1980. Coho salmon in the Snake River went extinct in 1985. Petitions to protect the Snake River runs were filed in 1990. This led to the regional Salmon Summit during the winter of 1990-91.

Despite these red warning flags, the federal agencies still did not act. Thus, in March of this year, U.S. District Judge Malcolm Marsh ruled that the federal agencies are, in violation of the Endangered Species Act, failing to take appropriate steps to save the salmon. In his ruling, Judge Marsh wrote: "NMFS has clearly made an effort to create a rational, reasoned

process for determining how the action agencies [BPA, Corps, and Bureau of Reclamation] are doing in their efforts to save the listed salmon species. But the process is seriously, 'significantly,' flawed because it is too heavily geared towards a status quo that has allowed all forms of river activity to proceed in a deficit situation — that is, relatively small steps, minor improvements and adjustments — when the situation literally cries out for a major overhaul. Instead of looking for what *can* be done to protect the species from jeopardy, NMFS and the action agencies have narrowly focussed their attention on what the establishment is capable of handling with minimal disruption."

#### • Not just the ESA requires salmon recovery

Judge Marsh's ruling is even more stark and foreboding when one realizes that the legal requirements for salmon recovery go well beyond the Endangered Species Act. Even if the Congress decided to amend or abolish the ESA as demanded by the law's detractors, the Northwest would still face a grave crisis over salmon recovery. While the ESA mandates recovery to "viable populations," other laws and legal requirements erect even higher standards for Northwest salmon recovery.

The Northwest Power Planning Act of 1980 directs the region to "protect, mitigate, and enhance" salmon runs in the Columbia watershed. The goal of the Magnuson Act is to maintain a strong salmon fishing industry in the region. And in signing the Pacific Salmon Treaty with Canada in 1985, the United States committed itself to a restoration effort which would sustain harvestable fish populations for both nations. The U.S. failure to honor its commitment has led to the immediate impasse with Canada over the treaty. In any case, while the Congress can amend or repeal the ESA and all these other laws that require salmon recovery, a treaty — once signed and ratified — stands beyond the power of Congress to change it.

For this reason, the salmon crisis is driven most fundamentally — not by the ESA — but rather by the treaties signed in 1855 between the United States and the sovereign American Indian Tribes in the Columbia watershed. The 1855 Treaties guaranteed the Tribes the right to salmon fishing in perpetuity. Moreover, U.S. District Judges Boldt and Belloni in 1974 and 1985 respectively ruled that the treaties put an affirmative obligation on the United States to maintain harvestable salmon populations in the river.

Mr. Chairman, as a representative of the Sierra Club, I can not, and I do not, speak for the sovereign Tribes. However, I can speak out for the sacred duty of this nation to keep its sworn word to American Indian peoples. Moreover, you and the Congress need to understand the true stakes at risk here in the salmon crisis.



Looming salmon extinctions pose the very real threat that the U.S. would abrogate the 1855 Treaties. If salmon vanish from the Columbia watershed, it is reasonable to conclude that, given two rulings already by the courts, the Tribes would prevail in obtaining reparations — paid annually and in very large amounts. Since extinctions are forever, so too would be the reparations. Since the other states would refuse to pay reparations so that the Northwest might continue to enjoy the lowest power rates in the nation, the burden would fall squarely on the beneficiaries of the BPA system, including electric consumers in Montana.

In this regard, it is telling to note that the first petition for ESA protection of a Northwest salmon stock — the sockeye in the Snake River Basin — was filed, not by an environmental group, but by the Shoshone-Bannock Tribe. It is further illuminating to consider a recent out-of-court settlement reached between BPA and the Colville Tribe of north central Washington State. In restitution for the flooding of Colville Reservation land by raising Lake Roosevelt behind Grand Coulee Dam, BPA agreed to pay the Tribe a multi-million lump sum plus annual payments of \$15 million adjusted upward with the agency's electric rates — in perpetuity. Reparations for abrogation of the 1855 Treaties due to salmon extinctions would involve more Tribes as well as the loss of something far more sacred to American Indians of the Northwest than flooded reservation lands.

Extinctions — not salmon recovery — would inflict the real damage to the Northwest economy. So contrary to the complaints of its detractors, the Endangered Species Act in the case of the salmon is actually working very effectively — like the proverbial canary in the coal mine — to protect the region and our economy against the worst possible nightmare. Complaints about the ESA amount to shooting the messenger.

While Montana would admittedly never see a salmon swimming in its rivers, the state as part of the regional hydroelectric grid has a vital stake in the recovery of these fish. And Montana runs very grave risks when the federal agencies responsible for salmon recovery tinker and temporize instead of taking prompt and prudent action.

**• There are workable, affordable ways to save the salmon**

Fortunately, there are scientifically sound, workable, and affordable solutions for salmon recovery. We would point specifically to the *Strategy for Salmon* from the Northwest Power Planning Council, the *Detailed Fishery Operating Plan* for hydropower passage from the Columbia Basin Fish and Wildlife Authority, and the forthcoming recovery plans from the Save Our WILD Salmon coalition and from the Columbia River Inter-Tribal Fish Commission.

All of these blue-prints for salmon recovery emphasize fixing the hydropower system. Why? The U.S. Army Corps of Engineers built its mainstem hydroelectric projects in the salmon migration corridor without any provision whatsoever for safe passage by migrating juvenile salmon through the dams and the reservoirs. This is an historical fact. While ladders allow the adults to reach spawning grounds, their progeny when migrating to the sea face a relentless and lethal gauntlet of turbines and slack water.

Consequently the National Marine Fisheries Service, the Northwest Power Planning Council, the Columbia Basin Fish and Wildlife Authority, and even the Bonneville Power Administration itself estimate that the hydropower system inflicts at least 80 percent — and upwards to 95 percent — of all the human-caused mortalities to these fish. To succeed, 80 percent of the recovery effort must go into fixing 80 percent of the problem.

I want to underscore that the hydropower system is the chief, but by no means the exclusive, cause of the decline of salmon in the Columbia watershed. Clearly the recovery strategy must address all human-inflicted mortalities, including harvest, hatchery production, and especially habitat degradation. On the protection and restoration of spawning habitat, the Sierra Club sees the PACFISH initiative from the U.S. Forest Service and the Bureau of Land Management, and additional actions, as essential.

Regrettably progress is not visible at all on fixing the hydropower system. Biologists at the federal and state fisheries agencies and the Tribes have recommended a package of measures to relieve the blockage to juvenile salmon migration. For passage at the dam structures themselves, spill — especially enhanced by upstream surface collection — has proven to provide the safest ride certainly compared to going down through the turbines. To speed the young fish through the slackwater reservoirs, the biologists would combine flow augmentation with drawdowns of some reservoirs in the migration corridor. The drawdowns of downstream reservoirs are necessary to provide sufficient water velocities as well as to make the most efficient use of, and limit, the flow augmentation releases from upstream storage pools like those in Montana.

All of these recovery measures for relieving the blockage to juvenile salmon migration by the hydropower system are also incorporated into the adaptive management approach of the Northwest Power Planning Council's *Strategy for Salmon*. None of these measures are currently in implementation.

In fact, BPA and the Corps have fought these crucial recovery measures to a standstill, have substituted their own brand of biology for the professional judgment of the duly established fisheries agencies and the

Tribes, and have pushed their own failed programs of yesteryear. The federal agencies claim that scientific "uncertainty" surrounds spill, flow augmentation, and drawdowns of downstream reservoirs; they demand more study before proceeding with these recovery measures. More delay will only bring about further declines in the salmon runs, higher recovery costs, more lawsuits, greater instability and uncertainty, larger economic impacts. With wild salmon runs now so depleted in the Columbia watershed, biologists can not design any "silver-bullet," "once-and-all-time" test of spill, flows, or drawdowns. In addition, the law and common sense direct BPA and the Corps to take action based upon the best available scientific information.

As I stated earlier, the terrible toll taken by the dams is not a recent discovery. So back in 1975, the Corps began its misguided practice of juvenile fish transportation — trapping young salmon and hauling them to the sea in trucks and barges. Barging and trucking young fish simply doesn't work, hasn't worked, and can not be made to work. According to one review of the program, Tribal and fish agency biologists fear that juvenile fish transportation may inflict more harm than does migration through the lethal corridor of mainstem dams. Independent scientific peer review of juvenile fish transportation recently concluded, "Juvenile salmon die at rates related to physical conditions in the river, including the hydroelectric system, despite the transportation effort. [T]ransportation alone, as presently conceived and implemented, is unlikely to halt or prevent the continued decline and extirpation of listed species of salmon in the Snake River Basin."

Nonetheless, the Corps and BPA have methodically expanded their failed program of barging young fish, and have refused to improve the physical conditions in the river through spill, flows, and downstream drawdowns. As a result, the salmon continue to decline toward extinction. As a result, because BPA and the Corps have not implemented any of the alternatives, NMFS must call for more and more releases of water from upstream storage projects like Grand Coulee, Libby, and Hungry Horse. As a result, the states and Tribes were forced to go to the courts for redress. As a result, Judge Marsh found BPA and the Corps in violation of the Endangered Species Act.

I understand, and I share very broadly, the anger and frustration that this committee has heard today from Mr. Williams and Mr. Cook. But let's not blame the salmon and the Endangered Species Act which will accomplish nothing and in fact, will inevitably bring real damage to the Northwest economy, our environmental heritage, and our way of life. Instead, let's hold to task, let's call to account, the federal agencies which have refused to implement a workable, affordable salmon recovery effort which would protect the Northwest economy, including Montana.

• **Costs of salmon recovery are modest and manageable**

With my prepared statement, I have enclosed several fact sheets and white papers which provide discussion and details on the technical aspects of salmon recovery. In one of those reports, we demonstrate that the proposed reservoir drawdowns in the salmon migration corridor (at John Day pool on the Lower Columbia and at the four projects on the Lower Snake) would actually cost the average residential consumer in the Northwest less than \$1.50 on his or her monthly electric bill — a modest price indeed especially when compared against the inevitably staggering cost which would come with salmon extinctions.

This cost analysis from the Save Our WILD Salmon coalition takes the "worst case" that expenses run as high as predicted by the Corps of Engineers, and that BPA ratepayers shoulder the entire load of paying for the program, as required under current federal law. Independent reviews by Harza Northwest (under contract to the Northwest Power Planning Council) and by Edward L. McLean (under contract to the Idaho Department of Water Resources) both concluded that the Corps' estimates of construction costs and schedules are wildly inflated for implementing these drawdowns in the migration corridor. Nevertheless, for our cost analysis, we took the "worst case" assumptions on expenses. The analysis shows that salmon recovery is definitely not a budget buster — but in fact a modest and wise investment in a legacy of salmon in the Columbia watershed — for electricity consumers.

Those consumers include Mr. Cook's business and the other aluminum operations in the Northwest which purchase power directly from BPA. Extinctions will surely lead to the lose-lose proposition of no salmon and no direct service industries in the Columbia Basin. The Sierra Club and other salmon advocates call for your leadership, Mr. Chairman, to pursue the win-win solutions in salmon recovery. It can be done.

• **The federal agencies can, but refuse to, reduce the call on Montana water**

In the brief time remaining to me this morning, I would like to focus on two key ways in which BPA and the Corps can proceed with salmon recovery while minimizing the call on Montana water. First, it is vital to recognize that the pools behind Libby and Hungry Horse Dams fluctuate up and down primarily because of the demand for hydroelectric generation — not salmon. Droughts like the current one hit Montana's reservoirs particularly hard just in order to keep the lights on. Mr. Chairman, I'm sure that you recall very vividly your hard work in 1988 to secure appropriations for extending boat ramps at the Libby project when drought in that year drastically pulled down Lake Koocanusa. In 1988, practically none of the water out of Libby went for salmon; it all turned turbines downstream.



Regardless of what the region does or does not do for salmon recovery, the pools behind Libby and Hungry Horse Dams will rack up and down according to the weather and the regional demand for electricity. These projects were originally designed to do so in order to make the world's largest coordinated hydropower system work as efficiently — and cheaply — as it does. If Montana wants to share in the benefits of inexpensive electricity, the state must also share in the burdens — such as fluctuating storage reservoirs.

To the extent that salmon recovery puts a call on water in upstream storage projects, BPA and the Corps can, if the agencies choose, limit impacts on Montana in two ways: arranging for more releases from Canadian storage, and operating the John Day reservoir on the Lower Columbia at minimum operating pool.

**Canadian water:** In their Mica project alone, the Canadians store more than twice the water behind Grand Coulee Dam. Under the Columbia River Treaty of 1961 and separate contractual agreements, BPA already has access to some 11.5 million acre-feet of storage in British Columbia.

BPA claims that the Canadians will not sell, or otherwise make available, this water for salmon flows downstream in the American portion of the Columbia River. This is not true. Last year, for instance, following a stormy public meeting in Libby, BPA Administrator Randy Hardy suddenly struck a deal with B.C. Hydro and Power Authority under which the Canadians released more water from their storage pools so that the Americans would maintain the elevation of Lake Koocanusa.

Per the Columbia River Treaty of 1961 and the separate contractual agreements, the Canadians do command a high price, but they will sell water to BPA for purposes other than electricity generation. Bonneville simply refuses to buy British Columbia storage for fish flows, pulls down Montana reservoirs, and then blames the Canadians and the salmon.

**John Day at minimum operating pool:** According to the Northwest Power Planning Council staff, lowering the John Day reservoir on the Lower Columbia by approximately 10 vertical feet to its minimum operating elevation provides water velocities equivalent to 3.1 million acre-feet of flow augmentation, or roughly the entire storage behind Hungry Horse Dam. To move juvenile salmon through this longest, fattest, slowest, and thus most lethal reservoir in the migration corridor, the Corps of Engineers can either lower John Day pool a little, or pull down upstream storage a lot.

With this prepared statement, I have enclosed an extensive backgrounder on the proposal to operate John Day reservoir at its minimum operating pool. Briefly this lowering of John Day pool would take a

negligible "hit" on hydropower generation, and none on barge navigation. To fully mitigate impacts (such as extending irrigation pump intakes and boat ramps), the Corps estimates, would run to \$100 million in one-time capital costs. In contrast, BPA must spend at least \$40 million each and every year to provide the equivalent 3.1 million acre-feet of flow augmentation from upstream storage.

So from a strictly bottom-line perspective, BPA can recover its \$100 million investment within 2.5 years — an excellent business proposition, to say the least. Meanwhile, if the Corps could identify a site to install 3.1 million acre-feet of new storage anywhere in the Columbia watershed, the agency would have started moving concrete yesterday. Nevertheless, both federal agencies have publicly opposed operation of John Day reservoir at minimum operating pool.

This vital salmon recovery measure has received support from the governors of Oregon, Idaho, and Washington State as well as the former regional directors of NMFS and the U.S. Fish and Wildlife Service. In its *Strategy for Salmon*, the Northwest Power Planning Council called for operation of John Day at minimum operating pool by April of this year. The Corps of Engineers has stated that it can not, or will not, implement the lowering of John Day pool before 1999.

To my knowledge, Gov. Marc Racicot has never publicly explained why he has not joined the governors of the other three Northwest states in supporting this salmon recovery action. The governor's appointees to the Northwest Power Planning Council, Stan Grace and John Etchart, have expressed concerns about "uncertainties" in the biological science and results; they would not proceed until biologists prove exactly how many more salmon would survive to spawn as adults.

This stance ignores the verifiable, hydrological certainty that operating John Day at minimum operating pool represents the single best way to minimize the call on Montana water for salmon recovery. Clearly, your leadership, Mr. Chairman, joining with your colleagues Patty Murray (D-Washington) and Mark Hatfield (R-Oregon) on the Senate Appropriations Committee is needed to secure funding and force the federal agencies to proceed with the lowering of John Day pool at the earliest date.

#### • Conclusion

Indeed your leadership and new policy direction from the Congress are needed if the Northwest is to successfully meet the overall challenge of salmon recovery. The Endangered Species Act did not create the crises over salmon or other looming extinctions; the failure of federal agencies to properly and promptly implement the Act did. Debating whether and how

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the Congress should reauthorize the Endangered Species Act will do nothing to save the salmon and thereby protect the Northwest economy; moving the federal agencies off the dime will get the job done. And time is of the essence because the Pacific Northwest has arrived at the historic crossroads where our society must decide once and forever whether future generations will see this magnificent creature swim in our waters, in our culture and economy, in our very hearts.

Thank you for the opportunity to testify before this committee today, and I eagerly welcome your questions.

TESTIMONY OF CHRIS HUNTER  
CHIEF, SPECIAL PROJECTS BUREAU  
MONTANA FISH, WILDLIFE AND PARKS

Prepared For

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
ESA REAUTHORIZATION HEARING  
RONAN HIGH SCHOOL  
JULY 23, 1994

Chairman Baucus, Members of the Committee, my name is Chris Hunter. I am Chief of the Special Projects Bureau in the Fisheries Division of the Montana Fish, Wildlife and Parks. I would like to thank you for the opportunity to provide testimony today on the reauthorization of the Endangered Species Act. In my testimony I want to discuss the aggressive approach we are taking toward recovering fish species of special concern. In addition, if this approach is to be successful the need for cooperation between landowners, agencies and conservation groups. I also want to speak briefly about grayling recovery, but I will mainly describe our efforts on bull trout recovery and the important role of local watershed groups in this process.

I believe this committee has already heard testimony regarding the state-led efforts to restore fluvial Arctic grayling in Montana. The state formed a fluvial Arctic grayling workgroup in 1987 and they have been working toward grayling recovery since that time. Membership on the workgroup includes not only state and federal agencies but private individuals as well. We have developed a final draft recovery plan which will soon be signed by members of the workgroup. More importantly, we are taking recovery actions.

We have identified those streams within the historical range of fluvial grayling that are best suited for recovery and we are re-introducing the species back into these waters. We are working with local landowners, irrigators and others to correct some of the habitat obstacles grayling currently face in recovery. We formed a non-profit entity which provides information to the public on restoration efforts and also raises funds for recovery.

As you know, the fluvial Arctic grayling has been petitioned for listing but has not yet been listed. As we approach private landowners to discuss the possibility of re-establishing this species in waters flowing through their lands, we get mixed reactions. Some individuals are willing to work with us, but the majority have serious, and legitimate concerns about their private property rights if the species is listed. It would be most beneficial to establish experimental populations of these species before listing, thus, alleviating landowners concerns and increasing our ability to restore this species.

Montana is also taking a leadership role in the recovery of bull trout. Governor Racicot has said that bull trout recovery is one



of his top ten priorities. In December of 1993 the Governor sponsored a roundtable workshop to discuss the status of bull trout in Montana and the northwest and to develop a strategy for state-led recovery of the species. The Governor was forthright in saying that the state was not trying to preclude listing of the species. Rather, the state has a responsibility to our heritage to recover and maintain bull trout. The state also has a responsibility to its citizens to recover the bull trout without causing serious economic or social disruptions. We recognize that maintaining the status quo will lead to extinction of the species. However, we also realize that tearing apart the social fabric of the state is not going to help bull trout or the people of the state.

A Bull Trout Restoration Team was formed by signed charter this past winter. The Restoration Team has nine members representing state and federal land and wildlife management agencies, the Confederated Salish and Kootenai Tribes, private industry, the environmental community and the Montana Chapter of the American Fisheries Society. The Restoration Team has met several times and developed an overall planning process and timeline, discussed MEPA/NEPA compliance and established a Scientific Group. The Scientific Group has begun preparing recovery plans for each of the thirteen bull trout management areas in Montana. Two preliminary draft plans were presented to the Restoration Team at their last meeting.

The final plans developed by the Scientific Group will identify the major risks to bull trout and suggest strategies for recovery for each of the bull trout management areas. In the near future we intend to establish drainage basin workgroups to add detail to the general recovery plan for each drainage. These drainage basin workgroups will address the obstacles to recovery as well as identify and later help implement specific actions for recovery in each drainage.

Obviously, we will be asking a great deal of these drainage basin workgroups. There are examples of such groups in the state that are already in place and working. The Flathead Basin Commission, the Clark Fork Steering Committee and the Blackfoot Challenge are all models we can use.

The Blackfoot Challenge is a group of individuals, landowners, recreationists, special interest groups and federal, state and local governments that has banded together to share information about issues important to the Blackfoot drainage. It is an organization created by the people of the Blackfoot Valley. Their purpose is to foster cooperative resource management to help manage and maintain the area's desired characteristics for the future.

The Blackfoot Challenge has held a number of community meetings to identify issues important to the residents of the drainage. It has sponsored workshops, such as a water rights mini-course, to provide information on subjects of interest to the Blackfoot Valley

community. In at least one instance the Challenge acted as an intermediary between a private business owner and a federal agency to resolve a resource conflict.

The Blackfoot Challenge was also important in organizing the Blackfoot Initiative. This is a cooperative program that has identified lands and habitats whose existence is important to the drainage. The US Fish and Wildlife Service, through their Partners for Wildlife Program, and Montana Fish, Wildlife and Parks are cooperating to obtain conservation easements on these lands. The FWP has committed two hundred thousand dollars to this effort. The purchase of conservation easements assures that the lands and habitats will be protected and that these lands will remain as viable agricultural operations.

Over the past several years FWP has been working with landowners in the Blackfoot to restore streams important to our native bull trout and westslope cutthroat trout. Through these efforts, twelve streams, which comprise approximately 150 miles and include areas that have been opened up when passage barriers were removed, have been restored.

The Blackfoot Challenge exemplifies the type of local organizational interest and commitment that is necessary for the recovery of a species such as bull trout.

The Bull Trout Restoration Team, Scientific Group and drainage basin groups, such as the Blackfoot Challenge, are the best hope for the bull trout. Unfortunately, none of these state and local organizations are provided any standing under the auspices of the Endangered Species Act. At this time, the Endangered Species Act provides little or no incentive to the states or local groups. They have no authority for recovery and there is no certainty that their actions toward recovery will be recognized.

This lack of authority when approaching landowners about returning grayling to a stream can be rather daunting. As one member of the grayling workgroup said, "if we are going to be successful at recovery, we need to have landowners fighting to get these species rather than scared to death that they might show up on their property." This sort of attitude shift should be a goal of ESA reauthorization.

The State of Montana is taking aggressive action to recover some of our native fish species. We are asking our citizens to do the same. Regrettably, as we discuss these issues among various agencies and the public we often hear, "we need to do this so they aren't listed and we lose management control." Or in the case of the private landowner, "so we don't lose control of our private property rights." Changing the law would most certainly ensure an enthusiastic attitude towards working on recovery because the law provides, not only the State, but the private landowners and citizens the authority to deal with the issues and the certainty that if they do deal with the issues, and do so successfully, their efforts will be rewarded.

SUPPLEMENTAL COMMENTS ON  
ENDANGERED SPECIES ACT REAUTHORIZATION

*submitted to*  
*Senate Committee on Environment and Public Works*

*from*  
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## I. INTRODUCTION

The Montana Council of Trout Unlimited strongly supports the Endangered Species Act and most of the proposed revisions in S. 921. We believe reauthorization must strengthen the law's ability to recover species, provide additional flexibility for state partnerships and ensure that sound science governs listing and de-listing decisions. Moreover, reauthorization, either through statute, rules or intent should identify new sources of revenue to enhance federal and state endangered species programs.

Reauthorization has triggered some unfortunate hyperbole alleging that the ESA always has a negative effect on economies and communities. We believe it is critical to focus on what the ESA's real history is. For example, examination of Section 7 consultations reveals that the ESA only rarely stops development. Specifically:

\* According to the GAO (1992), more than 90 percent of consultations that occur under ESA are resolved informally. Of the formal consultations, more than 90 percent ended with "no jeopardy" decisions. Of these, most resulted in modifications that allowed the projects to proceed.

\* Of the 2,000 consultations examined for a University of Colorado Law Review article (Houck, 1993), only 131 resulted in jeopardy decisions, and only 18 terminated projects -- less than 1 percent of the total consultations reviewed.

Because consultations rarely terminate projects, and many species still await recovery plans and on-the-ground recovery efforts, it can be argued that economic and social concerns are taken care of in most ESA-related decisions, while the needs of many species are placed second. Yet the spin put on a few dramatic yet complicated listings decisions -- such as the one for the northern spotted owl -- continues to wrongfully paint the ESA as a law gone awry.

Besides helping recover many important species, the ESA has also produced many little-publicized side-benefits. For example:



\* The ESA has highlighted the plight of many species and damaged ecosystems, promoting actions for recovery before extinction occurred or populations of additional species spiraled downward. Without the ESA the problems of Pacific salmon stocks -- which are resources of national interest -- would have less public attention.

\* The ESA has also helped produce economic boosts for local economies. For example, recovery of populations of the Apache Trout in Arizona has spurred a new sport fishery on the White Mountain Apache Reservation valued at \$690,000 annually. Colorado officials report that anglers come to Colorado specifically searching for the greenback cutthroat, a threatened subspecies whose numbers have improved because of actions undertaken by ESA listing. In addition, bald eagle concentrations attract thousands of eagle-viewing tourists every fall in Montana's upper Missouri River region and Lake Koocanusa.

Items Montana Trout Unlimited considers crucial to maintaining or improving this important law are:

\* Using sound science as the only determinant for listing and de-listing. We support S. 921's provision to include scientific peer review but only when it is essential. However, we believe all peer reviews should include only specialists with appropriate scientific credentials.

\* Providing more funding for state and federal programs that bolster habitat protection or restoration, including programs that benefit non-game species, watershed protection and elimination of nonpoint source pollution. We strongly urge federal grant programs be better coordinated to improve habitat for multiple species. S. 921 takes positive steps in that direction.

\* Improving relationships between the U.S. Fish and Wildlife Service and state wildlife agencies. New funding efforts mentioned in S. 921 will help.

\* Prodding cooperating federal agencies, especially the Forest Service and BLM, to become full partners in recovery efforts. These agencies often prefer being forced by USFWS to help recover species, even though Section 7 of the ESA indicates that federal land management agencies have an equal role in recovering species. S. 921 would improve this situation only marginally.

\* Ensuring ecosystem approaches are applied to species recovery and habitat protection. S. 921 takes a very positive approach by giving priority to multi-species recovery efforts.

These comments are not intended to be a point by point analysis of S. 921. Trout Unlimited's national umbrella organization, however, is more exhaustively examining S. 921.

## II. STATE AND FEDERAL RELATIONSHIPS

We believe the friction that has occurred between USFWS and Montana's Department of Fish, Wildlife and Parks over endangered species has been avoidable. Section 6 consultation provides ample opportunity for state involvement in listing and developing recovery plans. However, friction occurs in Montana because:

\* **Personalities intrude.** Because there are only a few individuals in both agencies dealing with the ESA in Montana, philosophy-based clashes among personalities have impeded progress.

\* **Resentment has emerged** over what is perceived to be unnecessary federal interference in state business. Much of this comes from other disputes with the federal government, and much of it is more philosophical than well-founded. The federal government, in fact, has contributed greatly to maintenance of Montana's wildlife heritage through its state-match funding programs and management of public lands.

\* The agencies have different charges. USFWS has a statutory obligation to implement the ESA. The state doesn't, and it only has to cooperate if it wants. Moreover, DFWP often sees its primary mission as satisfying license holders, and that means managing primarily for large-and small game, waterfowl and sportfish, which comprise only a portion of Montana's wildlife and fish heritage. On the other hand, USFWS is sometimes not sensitive to the state's obligation to hunters and anglers.

\* DFWP doesn't pay enough attention to management that improves the nonconsumptive enjoyment of wildlife, and it thereby misses opportunities to create greater appreciation for many species that are disappearing and whose welfare is often tied to larger ecosystem health. Montana, for example, has a minuscule nongame wildlife management budget and has done little to find new ways to get the majority of the state's wildlife enthusiasts -- nonhunting wildlife viewers -- to help pay for the program.

Better cooperation and actions for preventing ESA listings can be aided by:

\* Prodding both agencies to work together on more projects outside of those involving the ESA. They both seem to work well together in habitat restoration projects in the Blackfoot watershed. That's because the involved biologists have a high personal commitment to the resources. There is also good chemistry between individuals in both agencies, which is encouraged by the Blackfoot Challenge, a private-public collaboration (co-founded by Trout Unlimited) working for better land stewardship.

\* Encouraging states to develop recovery programs for candidate species in cooperation with USFWS before listing petitions are submitted. If the species are listed, however, allow the state to continue developing recovery plans (with USFWS cooperation), but mandate a specific time period a plan acceptable to USFWS must be completed.

\* **Improving funding for nongame programs.** Western states, especially Montana, should become leaders in developing new funding sources for the Fish and Wildlife Conservation Act programs, which may be our best conduit for getting federal money to nongame programs. Moreover, Montana should identify its own sources to be used as a match against federal contributions. New federal and state sources can include selected user fees, taxes on some sporting equipment and fees on developments that reduce nongame habitat. New federal-match money for nongame wildlife should be aimed first at states that employ specialists in nongame wildlife biology and conservation. Many states have few if any biologists trained to manage nongame species. This qualification shortcoming is a major roadblock to making states larger and more effective players in endangered species recovery.

Section 7 of the ESA is unclear on the issue of cooperation with Indian tribes. We recommend the ESA be modified to encourage cooperative agreements between USFWS and tribal governments., and that it also make tribes eligible for Section 6-type funding. Without voluntary cooperation from the White Mountain Apaches, recovery of the Apache trout would be impossible. The restoration effort there might be more successful if the tribe had full Section 7 recognition. We note that the recovery of some species (grizzly, gray wolf, bull trout) in Montana might be aided with agreements between tribes and USFWS.

### III. State of Montana Recovery Efforts for Candidate Species: Fluvial Grayling and Bull trout

The state has promoted its efforts to recover grayling and bull trout as examples of why the ESA isn't needed for these species. Montana Trout Unlimited, which supports and has been somewhat involved in both efforts, has some additional perspectives.

These efforts largely emerged because it appeared both fish were on the way to being listed. The state has known for years that both species have been declining. Recovery efforts began only when it seemed the ESA might be employed. The



state admits that the petition to list the bull trout triggered its Bull Trout Roundtable in December 1993, and the recovery planning that has occurred since.

In its position paper on the Endangered Species Act, the state claims it has been the primary contributor to grayling recovery efforts to date. It characterizes the USFWS as an impediment. Our experience is that though the rigidity of USFWS's policies may have caused friction, the agency also contributed money, people and hatchery space. In addition, Montana Trout Unlimited has contributed financially to the effort.

It's our opinion that it's too early to claim the grayling recovery efforts are successful, or that they have even produced substantial progress towards recovery. There are no long-term trend data indicating introduced populations are surviving or expanding, or that the existing populations in the Big Hole River, the focal watershed for the fish, are increasing. Moreover, though grayling are apparently being successfully reared in a hatchery, little progress has been made on gaining voluntary habitat improvements on the ground. Habitat degradation has been a key element in the fish's disappearance, and it will continue to be a roadblock in recovery until it is addressed.

The state, Forest Service, Plum Creek, USFWS and others point to their participation in Montana's bull trout restoration venture as the main vehicle for recovering bull trout populations. However, despite Gov. Racicot's apparent sincerity to make the effort work, it has some significant chinks:

- \* So far, it's solely process -- discussions, meetings and memos; and that's all it appears it will be for awhile. The effort has not produced any on-the-ground work to restore the fish.

- \* There is nothing in the process that compels anyone to do anything. Most biologists agree that bull trout recovery will require substantial sacrifices for habitat protection and improvement, and in fishery management. It remains to be seen if these sacrifices will be made voluntarily.

\*The scientific subgroup, perhaps the best-working element of this process, hasn't been given the necessary resources to do the best job. The recommendations of this group will be crucial, yet no money has been allocated to it, nor have its members' regular duties been reduced so they can concentrate on this project.

\* The process has no mechanism for implementing interim protection measures to ensure the population doesn't continue to decline during the period the plan is developed and before it makes it to the ground. So far no agency has volunteered to institute interim measures. Montana Trout Unlimited believes the lack of interim measures is a sign that not all the participants are sincere.

\* The success of the process depends on multi-interest watershed committees agreeing on voluntary protection and restoration efforts. The recovery committee unrealistically has scheduled several months for this grass-roots effort, when in effect it could take several years to succeed, if indeed it can succeed.

Despite the drawbacks of both the state's grayling and bull trout efforts, they should be strongly supported. However, they should not unduly influence obligations USFWS has under the ESA.

The Apache trout restoration effort in Arizona, and that for the greenback cutthroat in Colorado, are examples of how cooperation between states and USFWS is leading to recovery of a fish species under the ESA. And though both efforts have a way to go before these species are downlisted, population trends are up as is public acceptance for ESA involvement in the restoration efforts. Colorado, in fact, has named the greenback cutthroat its state fish, the first instance we have heard of a listed species being granted such a designation. The Apache trout and greenback cutthroat recovery programs demonstrate that the ESA can work effectively in bringing the federal government and states together to recover disappearing species.

#### IV. Ecosystem Management and the ESA

We heartily endorse giving priority to species whose recovery will benefit other inhabitants of the same biological system. It's important to note that Montana's bull trout is such a species. If it was listed, its recovery plan could directly benefit the following species which are either federal ESA candidate species, State of Montana Species of Special Concern or Forest Service Sensitive Species in Montana: the inland redband trout, white sturgeon, westslope cutthroat trout, torrent sculpin, shorthead sculpin and Coeur d'Alene salamander.

Among the other troubled species benefiting at least indirectly from an effective bull trout conservation plan (because it would protect riparian areas) are the grizzly bear, bald eagle, peregrine falcon, harlequin duck and loggerhead shrike. And of course, many other species -- from amphibians and invertebrates to furbearers and neotropical migratory birds (the majority of those nesting in Montana nest in riparian areas) would also benefit.

Though the concept of ecosystem management is regularly trumpeted as a solution to preventing extinctions, few biologists can describe it sufficiently let alone implement it. However, aquatic biologists and hydrologists do understand how catchment basins work as a system. We believe, therefore, that many of the scientific concepts they are now developing for restoring fish populations -- such as identifying and protecting focal and nodal watersheds, and then linking them into a larger network to ensure there is sufficient variability in habitat and subpopulations for overall population security -- can greatly benefit terrestrial species. Practicing sound, scientific watershed conservation is one of the keys to being successful at larger ecosystem management.

**Invited Testimony by Professor Stanford  
Regarding Reauthorization of the Endangered Species Act  
U.S. Senate Committee on Environment and Public Works  
July 23, 1994, Ronan, Montana**

**Mr. Chairman and Distinguished Members of the Committee:**

I am Jack A. Stanford, Bierman Professor of Ecology at The University of Montana and Director of the UM Flathead Lake Biological Station. For over 20 years I have directed research describing ecological processes that control the distribution and abundance of animals and plants. Although I have conducted studies in many areas of the U.S. (MT, TX, OK, AZ, CO, UT, AK) and in several other countries (Canada, Norway, South Africa and Papua New Guinea), my priority research site has been the Flathead River-Lake ecosystem in northwestern Montana and southeastern British Columbia. My work at the Biological Station has served me well, owing to the pristine nature of the Flathead and the detailed perspective obtained through long-term research in one ecosystem. This perspective has been especially useful in my recent scientific reviews of endangered species recovery programs for the Fish and Wildlife Service (Colorado River fishes) and National Marine Fisheries Service (Columbia River fishes).

A pair of bald eagles established the first nest ever observed on the grounds of the Flathead Lake Biological Station in 1993. They did not successfully rear young birds the first year, but they returned to the new nest to try again this year. We now count on the arrival of these two eagles in the same way we watch for osprey to return in the spring, feel the lake water warm up, expect the river to flood and watch the cherries bloom. It is a Flathead Lake event!

The down listing (from endangered to threatened) of the bald eagle is very satisfying to me and my students as well as residents of Flathead Lake who cherish this great bird. Its antics add majesty and intrigue to the changing moods of the lake and define the high quality of life we enjoy.

The bald eagle recovery represents every reason why the ESA is an essential statute in preserving the quality of life in Montana and the USA. The most important first step leading to recovery was the recognition that a national symbol was in danger and subsequent granting of respect to the environmental needs of the birds along their very long migration corridors and at their nesting sites. This was accomplished through the ESA. Secondly, through the National Environmental Policy Act, and to a larger extent the creation and implementation of the Clean Water Act, pollutants that were jeopardizing the health of aquatic food chains upon which the birds exist were reduced and many of our polluted water ways were cleaned up and the eagles have thrived, even though they often reside close to humans.

But, other species, equally spectacular in their own right and now protected under the ESA, do not have the level of respect we have granted eagles. Some species such as the grizzly bear and wolf are in endangered in large part because they are persecuted. The only good wolf is a dead wolf! However, most extinctions, extirpations and population declines that we observe today are occurring because habitats critical to these organisms have been damaged or destroyed to the extent that recovery is doubtful. Indeed, I think that most species currently listed will never recover in spite of millions of dollars spent in an effort to head off extinction because we are focusing on the species, not the ecosystems that support them. The ESA clearly was intended to foster protection of ecosystems (see page one of the act) and I urge the Congress to reauthorize this important legislation in a way that stabilizes, protects, rehabilitates and reconnects ecosystems (critical habitats) nationwide that contain high or unique biodiversity.

Allow me to elaborate these introductory comments.



## Identifying and Linking Critical Habitats

The ESA does not provide an effective process for recovering widely distributed species. For example, species like bull trout (warranted for listing), Columbia River Chinook salmon (listed), Canadian lynx and harlequin ducks (likely to be listed) have low and declining numbers within local populations but are found over a wide range (some, like the lynx, are fairly common outside our borders but are almost extirpated in the USA). The ESA statutes do not initiate action on such species until only fragmented, relict populations remain. These relict populations persist in isolated areas within ecologically-fragmented landscapes. Hence, high probability of extirpation of local populations exists in spite of the best intentions of the Act. (The term refuge used here should not to be confused with Federally designated National Wildlife Refuges; areas referred to here are more numerous and may occur on Federal, state and private lands).

Refugia containing rare species usually are characterized by having high native biodiversity. They retain enough pristine ecological integrity to allow a positive life history energy balance for rare species (i.e., species have enough environmental resources to grow to maturity and reproduce or in some cases, such as the endangered fishes of the Colorado River, they have enough resources to persist, but not reproduce, and continue to exist only because they are long-lived species). Therefore, refugia also foster existence of many other species that are not so rare or may even be abundant elsewhere. But, recovery of endangered species or populations necessitates 1) rehabilitation of damaged landscape units to the extent that rare species (and all other species unique to that particular ecological community) may recolonize (re-establishment by planting of cultured stocks should be avoided unless wild stocks have been virtually eliminated, which is not the case for most listed species) and 2) reconnecting of rehabilitated units with refugia so that isolated populations can increase with natural gene flow (i.e., little or no inbreeding).

The spotted owl, grizzly bear and wolf are other examples of rare species whose habitats have been severely fragmented and whose recovery is clearly dependent on rehabilitation and reconnection on a regional scale of landscape units that have all of the interactive habitat elements that are needed for populations to expand. A critical and currently missing component of ESA is to identify and protect areas or refugia characterized by high native biodiversity and, hence, high environmental integrity (e.g., the Crown of the Continent ecoregion at the large scale and the Nyack flood plain as a unit of critical habitat within the CCE). My colleagues and I are currently working hard to inventory these pristine nodes (within the Crown of the Continent ecoregion) as the basis for reconnecting fragmented landscapes to facilitate recovery of currently listed species and, more importantly, to eliminate the need to list many more. The ESA could be revised to facilitate acquisition of such information nationwide and allow a more holistic approach involving ecosystem science and management, rather than focusing efforts species by species.

## Reconnecting River Corridors

Many listed species are aquatic or are dependent on food webs that occur in lakes, streams and wetlands. Since most of our aquatic environments are fed by river flow, river corridors (including the river, its floodplain, riparian and wetland habitats and important connections to upland forests and grasslands) are probably the most important landscape feature that foster biodiversity. Unfortunately, our river corridors are fragmented by human activities that vastly compromise biodiversity. Indeed, 77 percent of the total water discharge of the 139 largest river systems in the northern third of the world are affected by fragmentation of river channels by dams and by other water regulation resulting from reservoir operation, interbasin diversion and irrigation. Pollution barriers are also problematic for recovery of endangered species.

I currently serve on several science review teams working to provide a more encompassing approach to protection of river corridors on tributaries of the Columbia and Colorado Rivers as a critical aspect of recovery of endangered fishes and other species. I have found that Biological opinions and Section 7 consultations drive all subsequent actions. In most cases, the opinions are political statements that are not based on thorough synthesis of scientific information and, especially, are not based on contemporary ecological theory (i.e., the conceptual basis for recovery is often flawed because political "realities" are placed in higher regard than general ecological principles). Actions that cost a great deal of money are implemented, without regard to ecologically-sound objectives and, worse, no defensible monitoring program is initiated to determine whether the environmental bottlenecks that have compromised the species have been corrected by the recovery actions (i.e., while in some cases changes in population size, usually declines, of endangered species may be monitored effectively, the impact of recovery actions on ecosystem processes that are limiting viability of the species are not examined empirically).

For example, recovery of the endangered fishes of the Upper Colorado River for nearly two decades has been based on the assumption that recovery can occur in spite of loss of peak (spring runoff) flows and elevated and extremely variable base flows, as a consequence of hydropower operations throughout the Basin. Or, at least, the prevailing philosophy is that incremental flows that periodically keep more of the river bottom wet will facilitate recovery. A similar philosophy has recently emerged on the Columbia River with regard to recovery of endangered salmon stocks (and without regard to pervasive, negative influences of reservoir releases in headwater areas where salmon are not found). Simply putting more water down the river without regard to how those flows may or may not reconnect remaining fragments of the river corridor compromises both the endangered fishes and the need to use river flows for hydropower, irrigation, domestic and industrial supplies and dilution of waste. I have shown that very little bioproduction of any kind can occur in the rapidly fluctuating flow zone of the various regulated tributaries of the Colorado and other rivers in the West. Hence, the endangered fishes cannot recover because the food web that sustains them is severely damaged by the base flow variations (i.e., aquatic organisms cannot be sustained on areas of river bottom that are dewatered and rewetted every few days; moreover, the water is very cold because of bottom releases from the reservoirs and the cold temperatures further compromise the food webs by reducing growth) and because their spawning and rearing habitats are limited by the fact that bottom lands and backwater environments are no longer seasonally flooded owing to storage of peak events in the reservoirs. This problem is pervasive in all regulated rivers worldwide. River flows must be re-regulated to allow seasonal flooding and less base flow variation. Outlet structures at the dams must be retrofitted to allow management of downstream temperature patterns to increase growth (bioproduction). However, these actions should not be initiated without scientific synthesis of the problem in an ecosystem context with peer review and implementation of a monitoring program that will provide clear demonstration that the re-regulation scheme actually facilitated recovery (see Figure 1).

### Salvation Through Ecosystem Management?

Hence, my view is that in most cases recovery of endangered species and prevention of future listings requires a regional ecosystem approach, as a replacement for species-based management. A sound ecosystem management process (Figure 1) considers endangered species in the context of key landscape-level processes, including both environmental and human-social variables, before management decisions specific to an endangered species are made. Moreover, a feedback loop to re-evaluate actions based on new research and monitoring provides more holistic accountability that is often missing from current ESA processes.

While the Clinton administration is fostering "ecosystem management" as a new policy for federal lands and the environmental goods and services provided by those lands, few at the field

level seem able to define an ecosystem, much less manage it, and basic principles of ecosystem science (e.g., importance of connectivity between landscape units) are poorly understood. Moreover, actually measuring responses to environmental change is rarely done over long time periods, so quantifying the success or failure of recovery programs becomes a political football game on a field without yard lines and, therefore, no empirical measure of progress toward the goal line is ever made. Hence, ecosystem management, as currently implemented, is not a replacement for the ESA.

### What to Do?

The ESA has been the flagship of ecosystem protection, because rare species remain only in habitats that retain natural ecological structure (biodiversity) and function (provision of interactive goods and services that biota require to complete their life cycles). By seeking to protect rare species, we seek to protect the natural attributes of ecosystems that sustain rare species. I view that as the intent of the ESA. Extinction of currently listed species can only mean loss of environmental vitality, which sooner than later compromise our quality of life. But, the rate of listings and a species-by-species response is doomed to failure, given the rate of environmental change that is occurring in the USA and worldwide as a consequence of human exploitation of environmental goods and services. Moreover, we can't afford the costs that proliferate with a species-specific approach.

Revising the act to solve this problem is not easy and it cannot be done under the ESA alone. I offer several suggestions, the rationale of which is rooted in basic ecosystem principles that recently have been articulated in white papers to Congress by the scientific community (e.g., the Sustainable Biosphere Initiative of the Ecological Society of America...a strategy to sustain natural environmental goods and services of the biosphere (see *Ecology* Vol. 72(2), 1991, or contact the ESA, 2010 Massachusetts Avenue, NW, Suite 420, Washington, DC 20036); the Freshwater Imperative...a strategy for research to sustain clean water supplies in the USA (Island Press, 1994, or contact me); Entering the Watershed...a strategy for revitalizing the nation's river basins (Island Press, 1993, or contact the Pacific Rivers Council, 605 Prince, Alexandria, VA 22314):

1. Reauthorize the Act in principle and practice, but do so in the original spirit of the concept: to stabilize, protect, enhance and connect ecosystems (critical habitats) that maintain natural biodiversity in this country. This will by necessity foster ecosystem management and protection of strategic resources, like clean water. Rename it the Endangered Ecosystems Act, if necessary.

2. Revise the Act by adding provisions to identify and protect remaining refugia of high biodiversity on all lands and waters within the United States as well as foreign lands and waters used by migratory species. This logically should involve the new National Biological Survey, but must also involve the ecological research universities (because most of the basic research that has identified critical habitats has been done by university-based scientists). Much of the information already exists (e.g., in National Forest offices) and simply requires synthesis. But, synthesis, followed by proactive measures, needs to be done quickly to prevent further extinctions.

3. Revise the Act to provide mechanisms for rehabilitating damaged habitats and interconnecting them with existing refugia (as defined in 2.) to enhance not only endangered species but biodiversity and bioproduction in general and as an alternative to further species by species listings. The objective must be to prevent listings!

4. Revise the Act to emphasize maintenance of ecological integrity and connectivity along river corridors, including flood plains and headwater tributaries. Rivers and streams are the

ribbons of life that interconnect virtually all of the ecological units and processes that are needed to maintain biodiversity.

5. Revise the Act to limit the spread of exotic flora and fauna. In all of the recovery programs I have evaluated, unanticipated, negative interactions (e.g., predation, competition for food and space, disease transmission) with nonnative biota is by far the greatest source of uncertainty in resolution of actions to recover endangered native biota. For example, introduction of *Mysis relicta*, a shrimp, has changed the food web of Flathead Lake forever, and may be compromising the rare bull trout in ways that have yet to be quantified.

6. Seek continuity and synergism between ESA and other statutes, such as the Clean Water Act and the Farm Bill, to accomplish land and water stewardship by individuals and communities nationwide. Statutes have proliferated to the extent that none are implemented to the degree needed to protect and sustain either our environment or our economy. Everyone wants clean water. Clean water is forthcoming only from watersheds that mirror logical and enforced land use practices that limit erosion and other pollution processes and enhance nutrient and organic matter retention in soils (i.e., those practices that limit human-mediated flux of materials from the terrestrial to aquatic components of the landscape). Everyone wants sustainable agriculture, timber production and other landscape-based economic activities. Agricultural subsidies are critical to survival of family farms, but those subsidies should be linked to land and water stewardship. Everyone wants clean air, which requires alternative disposal processes for smoke, road dust and industrial pollutants. If we have clean air, clean water and organically-rich soils, biodiversity will also be present and the demise of rare species will be substantially retarded.

7. Revise the Act to insure scientific accountability of those agencies in charge of recovery of endangered species. Empiricism (quantification of ecological processes and responses that are limiting reproduction of endangered species; usually this means measures at an ecosystem scale as defined by the life cycle of endangered species) and peer review are the essential ingredients (Figure 1). Scientific accountability is different than economic accountability, in that recovery of endangered species is possible even if it costs a lot; recovery is not possible without scientific synthesis and ongoing accumulation of new information.

I shall be pleased to elaborate any of these points. Thank you.

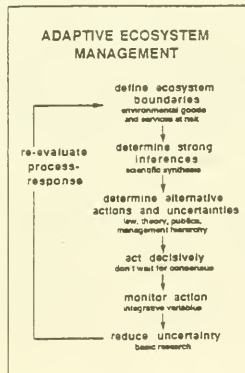


Figure 1. Sequence of steps that facilitate ecosystem management.





STATEMENT OF HANK FISCHER  
NORTHERN ROCKIES REPRESENTATIVE  
DEFENDERS OF WILDLIFE  
FOR THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE  
CONCERNING REAUTHORIZATION OF THE ENDANGERED SPECIES ACT  
JULY 23, 1994

Mr. Chairman, my name is Hank Fischer. I have worked as Defenders of Wildlife's Northern Rockies Representative for the past 16 years, and during that time have been intensively involved with endangered species issues in Montana and the region.

When people talk about the Endangered Species Act (ESA), too often they talk about far-off locations where no one knows the facts or the context of the situation. To solve problems, we must talk specifics. Rather than looking elsewhere, the best way for Montanans to evaluate the effectiveness of the Endangered Species Act is to look at its performance in our own back yard.

First of all, Montana has only ten listed species: five birds, three mammals, one fish, and as of last week, one plant. This is one of the lowest number of listed species in the nation, a significant fact considering we are the fourth-largest state. By contrast, California has 97 listed species, Texas 59 and Florida 78.

But here's what may be the single most important Montana endangered species fact: Montana has approximately 60 species that are candidates for listing under the ESA. Why's this so important? It makes plain that the real action with endangered species conservation in Montana lies not with species listed now, but with species that may be listed in the future. It means that if the State of Montana develops conservation programs that preclude the need for listing, the issue of how onerous the Endangered Species Act is or isn't will be largely a moot point.

The ESA places no constraints on our state's ability to develop programs to conserve candidate species. In fact, S.921, authored by Sen. Baucus, would provide the opportunity for states to apply for federal matching funds to help conserve candidate species. But let's return to the ESA's impact on Montana.

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During the rest of my testimony, I want to provide a thumbnail review of Montana's ten listed species, the progress that's been made toward recovery, the actions that have been taken that have allowed for that recovery, and the impact those recovery actions have had on local economies.

--bald eagle. When the eagle was listed in 1978 there were 12 occupied territories in Montana. As of 1993 there were 166. This improvement has been achieved by controlling dangerous pesticides and by protecting nesting habitat. This has involved changing the timing of timber sales, roadbuilding activities and other intensive activities to avoid the sensitive nesting period. Private landowners have also been involved, and they have made changes voluntarily. Impact on local economies has been minimal. I might add the recovery has been very positive. The City of Helena has capitalized on the increased eagle numbers at Canyon Ferry with development of wildlife viewing opportunities.

--peregrine falcon. When listed in 1973 there were only one or two known nesting sites; by 1978, there were none. Over the last decade, there's been an active reintroduction program. In 1994 there are 15 known nesting sites and six active reintroduction sites. Again, these improvements resulted from restricting certain harmful pesticides.

--whooping crane. In the early 1940s, there were only 21 whooping cranes left. Today we have a wild population of nearly 140 birds. Whooping cranes migrate through Montana in spring and fall. They're most frequently seen at Medicine Lake and Red Rock Lakes National Wildlife Refuges, where they find habitat and security. Their recovery has had no economic impact in Montana.

--least tern. When this species was listed in 1985, its status in Montana was unknown. In 1992, 124 adult birds were observed, exceeding the recovery goal. The Corps of Engineers has changed management of Missouri River dams to create more natural flows, and has actively managed habitat along the river. These actions have had minor economic impacts.

--pipng plover. When listed in 1985 there were four known pairs in Montana; now there are 74. It has benefitted from the same management actions taken for the least tern. Other alterations to protect terns and waterfowl include burying or rerouting powerlines that run between important wetland areas. Again, economic impacts of recovery efforts have been slight.

--black-footed ferret. No ferrets are known to exist in Montana; a reintroduction is planned this fall for the C.M. Russell National Wildlife Refuge. Actions taken to protect ferret habitat include review of large-scale prairie dog poisoning programs on public lands. Economic impacts have been minimal.

--pallid sturgeon. Listed in 1990, very little is known about this species in Montana. Changes in Missouri River flow regimens are

species in Montana. Changes in Missouri River flow regimens are expected to help sturgeon. Currently under study. Little or no economic impact.

--grizzly bear. Listed in 1975, the species was in serious decline in Yellowstone and populations were unknown in the Northern Continental Divide. The most recent Yellowstone information reveals a minimum populations of 272 bears and an annual population increase of nearly 5%. If this rate continues, the Yellowstone population will double in 17 years. Grizzly populations in the NCDE are nearing recovery goals. Progress toward grizzly bear recovery has been achieving by limiting mortality and by reducing roadbuilding in grizzly bear habitat. This is the only species where it can be realistically argued that any significant economic impact has occurred. Road closures and road obliteration in recent years are an attempt to balance over-zealous roadbuilding that occurred during the last two decades.

--gray wolf. When the wolf was listed in 1973, there were no known breeding populations in Montana. Today there are believed to be 7 packs of wolves totalling about 70 animals. Recovery progress has been achieved largely by controlling mortality. There have been very few land use restrictions, and the only economic impact has been the occasional loss of livestock. Even this minor loss has been mitigated by compensating livestock producers for all verified losses to wolves.

--water howellia. This species was just listed last week, and occurs mainly in the Swan River Valley.

There's no evidence to show the Endangered Species Act is stopping much development in Montana. Since 1980 the U.S. Fish and Wildlife Service has evaluated about 12,500 Montana projects to see if they comply with the ESA. In only 17 cases has the Service declared that a project would "jeopardize" a species. In each of those 17 cases, the Service has suggested "reasonable and prudent" alternatives to allow the projects to proceed. In most of those cases, the project was completed. The real strength of the ESA has never been in stopping development, but in modifying it and making it compatible with species conservation. Poll after poll has shown that's exactly what the public wants.

Finally, let's look at the cost of endangered species recovery in Montana. During 1993, the U.S. Fish and Wildlife Service spent approximately \$1,250,000 and the State of Montana about \$335,000. That's less than it costs to upgrade two miles of a Montana highway, about the same amount the federal government loses on below cost timber sales on the Beaverhead National Forest and far less than Montanans spend in a year on Little Caesar's Pizza. Perhaps in better perspective, while the State of Montana spends \$335,000 per year on endangered species, it spends \$20 million dollars per year on game species.

In summary: compared to most states, Montana has very modest endangered species problems. We have few listed species, we're making solid progress toward recovery on the ones we have, and economic impacts have been minimal. Most importantly, if we take action now we can prevent the necessity for future listings and make the Endangered Species Act debate a non-issue for Montana. We can sit around and argue about how bad things are, or we can take responsibility and determine our own future.





# MONTANA FARM BUREAU FEDERATION

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## TESTIMONY ON ESA by Hertha L. Lund

Good morning. My name is Hertha Lund and I am here today to represent the Montana Farm Bureau Federation, which has more than 6,000 members. The Montana Farm Bureau Federation is Montana's largest general ag organization. Agriculture is still the number one industry in Montana--greater than tourism and mining combined. We thank you for this opportunity to testify on the ESA and hope you will take our concerns to heart and to D.C.

In my job for Farm Bureau, I have the opportunity to contact and speak with many farmers and ranchers from across Montana, who could not be here today because of the travel distance. In fact Noreen Teague, whose family is fifth generation Montana ranchers, said, "They always do this [hold these hearings] when farmers and ranchers have to work." It is likely that many farmers and ranchers will not be able to attend because of haying and other endless jobs that do not end on weekends.

Therefore, I will be sharing a few of our members stories with you and address Farm Bureau's concerns with the ESA, as well as provide recommendations on how to improve the ESA to provide positive incentives to protect endangered species. Overcoming the current perverse incentives in the ESA would provide a remedy for the current "shoot, shovel and shutup" syndrome that plagues endangered species once they are listed and become a menace to landowners.

Your bill does not go far enough. Sen. Baucus, you have stated that you feel you have found common ground and created incentives. However, the fact remains that your rhetoric is better than your bill. Farm Bureau cannot support your bill at this point because it simply does not address our member's concerns. The bill remains one that is tilted toward the environmental lobby industry and not to Montanans.

"There is really no reason to be involved with the #@%!! thing

right now," is what Bob Hansen told me, who ranches near White Sulphur Springs. His family has been ranching in that area since 1881. He explained that your current legislation and the current law provides no incentive for landowners to provide habitat for an endangered species on private property because the ESA takes away property rights.

"So it is detrimental to find an endangered species on your property," Hansen explained. "The ESA is totally negative to a land owner. The act takes rights without justification or compensation."

Bob is just one of many Montana's ranchers and farmers who are gravely concerned with current ramifications of the ESA. That is why Farm Bureau has contacted Sen. Baucus's office to plead for legislative measures that will provide protections for Montana landowners in the face of ever-expanding ESA regulations.

"This ESA can economically strip Montana," Bob told me. "We are not opposed to the wolf. We are opposed to what the ESA can do to us."

Your ecosystem approach will only extend problems for private landowners. It seems to be a way to increase central landuse planning from Washington D.C., while at the same time decreasing government accountability. Under ecosystem management there are no measurable goals nor are there any boundaries. Such a system would create a smothering blanket of government control.

Montana farmers and ranchers already feel like they are under an onslaught increasing government regulation. Sara Taliaferro told me that some of the older people in her community near Dupuyer are saying to heck with battling anymore. However, she said that to give up would not be fair to future generations or to America. She told me we need to continue to fight for those principles upon which America was founded, such as property rights.

By changing the focus to an ecosystem approach, the burden on individual landowners may become unbearable. Farm Bureau believes

that by forcing protection of species before they are threatened or endangered will simply remove the obligation for government to justify its actions. A property owner's position would be indefensible in the onslaught of ecosystem management.

Monica Switzer, a Farm Bureau member who ranches near Richey said, "Human lives are very important and should be a top priority." She explained that she thought that economic information should also be considered to determine how species plans will affect people.

Sarah, Bob, Monica and other Montana farmers and ranchers are distrustful of the ESA. The wolf reintroduction and other experiences with elected and appointed government officials has led many to fear hidden agendas and the misuse of the law.

Ken Blount, a rancher from Malta who has worked extensively on the black-footed ferret solutions, said he and others are concerned about government officials changing the rules in the middle of the game. "The black-footed ferret has a chance of being a success story, but the rules are not released. I am not sure if the landowner's concerns are still in the rules," Blount said.

Noreen Teague, also mistrusts the ESA. "They are using the ESA to undermine our position on the forest," she said. "If we lose 500 acres of our permit, that will be 15-20 percent of our herd that we would ultimately have to get rid of." She explained that the government wants to set aside 500 acres of their Forest Service grazing permit because of the Goshawk--a big gray hawk that is not even listed on the endangered species list in Montana.

Another Montana rancher and Farm Bureau member, Ken Kirshner, also has found those advocating the ESA to be distrustful. He said he believes that provisions need to be written into the law to severely punish any elected or appointed public official who is found guilty of deceptive practices.

Farm Bureau believes that an appropriate balance between the needs of a species and the needs of people can be struck. No one

wants to see species become extinct, yet at the same time no one wants to see people lose the capacity to produce food or to be without essential human services. Any such balance, however, must begin with a proper respect for property rights. This includes recognition that the costs to recover species must be borne by the public as a whole and not by the few who happen to have listed species on or near their property.-

The recent Supreme Court case of Dolan v. City of Tigard upheld the Constitutional protection of property under the Fifth Amendment. In that case, Chief Justice Rehnquist writing for the majority stated, that a principal purpose of the Takings Clause is "to bar Government from forcing some people alone to bear public burdens, which in all fairness and justice, should be borne by the public as a whole." The current ESA and your bill, Sen. Baucus, both force a minority of landowners to bear the public burden of providing species habitat. Based on the reasoning used in Dolan, such results are not fair and just.

Rick Stroup, a professor of economics at Montana State University compared the ESA to forcing citizens to quarter soldiers, which is unconstitutional. He said that is ironic that the ESA forces individuals to quarter a grizzly bear, a spotted owl, or any other member of a species declared to be threatened or endangered. If citizens were required to quarter soldiers, soldiers may also be feared and despised as much as the endangered animals. However, that is not the case and citizens do not hate soldiers. Ask any politician who ever tried to close a military base.

In addition to being out of line with Constitutional protections the ESA is being used in ways that its original sponsors never dreamed of using the Act. Take for example the statement by a Sierra Club Legal Defense spokesman, "Thank goodness the spotted owl evolved in the Northwest, for if it hadn't we'd have to genetically engineer it." The ESA has been called the pitbull of environmental regulations and has grown into a draconian, mammoth landuse plan directed from inside the beltway.

The whole Act has gone amuck and needs fixing. It is cer-



tainly a case of good intentions gone awry. It is bad for people and for endangered species.

In addition, the Act is expensive. The National Wilderness Institute estimates that the identifiable cost of the first 306 written recovery plans will exceed \$884 million, if the plans are executed as written by the Fish and Wildlife Service. This figure ignores the cost of recovery plans for the 589 currently listed species that do not yet have written plans. And the figure ignores many additional costs to private citizens. Farm Bureau members would like to see a total accounting of how much money has been spent on endangered species.

Even though the Act has cost a lot of money, it has not been very successful. Only five of 895 listed endangered species have been removed from the list because they are no longer endangered. It seems we could use the funds more effectively.

The problems can be remedied. We ask you, Senator Baucus, to craft a statute that will promote recovery of truly endangered or threatened species, while at the same time not destroying the social and economic fabric of Montana and other affected areas. The current law and S.921 fails in both regards, and a new approach is called for.

There has to be some type of ownership in the program for the landowner--participation in the program, compensation and other mechanisms that make it positive for the landowner to provide habitat for endangered species. We provide the following suggestions for amending the Endangered Species Act to better achieve its goals.

\*Provide Positive Incentives to Enhance Recovery of Listed Species Rather than Using Negative Enforcement Penalties.

\*Critical Habitat Should be Designated at the Time of Listing of a Species.

\*The Act Should at Least Require Minimum Scientific Standards Necessary to Support Listing and Other Decisions Affecting Listed Species.

\*Delete Application of the Endangered Species Act to "Sub-Species and "Distinct Populations."

\*The Definition of "Take" under Section Nine Should be Clarified to Not Include Modification of Potential Habitat.

\*The Act Should Provide Strict Liability for Damages Caused to Person and Property from Listed Species.

\*The Act Should be Amended to Require a Species Management Plan that Considers Socio-Economic Impacts Separate from the Listing Process.

\*If Substantial Progress Toward Recovery or De-Listing is not made within 10 Years, Any Critical Population should be Identified (After Public Notice and Comment) and the Remainder Released from any Protection.

"Farm Bureau strongly opposes the dumping of responsibility for the welfare of a listed species on a few landowners. We submit that if the species is not important enough for the government to begin recovery efforts within a reasonable time, then regulations should not be levied on landowners."

\*The Private Property Rights Act should be Enacted as Part of Re-authorization.

\*The Exemption Process is Overly Expensive, Unworkable and Generally Inaccessible. It Needs to be Changed.

\*The Act Should not Include Protection for Candidate Species or Ecosystems. To do so will exponentially increase the concerns and conflicts that arise under the current law.

### Conclusion

Farm Bureau believes that the current ESA is a prime example of good intentions run amuck. The Act is expensive and is not effective in protecting species. The Act creates perverse incentives to destroy rather than protect species and the Act undermines constitutional protections.

It would be better for the ESA and Montanans if Congress would provide protection for property rights and work with farmers and ranchers to provide positive incentives to provide endangered species habitat. Your current bill does not yet find the common ground on the ESA. We look forward to working you with to modify the bill so that the bill is not tipped towards the powers that be inside the beltway--the environmental lobby industry.

Farm Bureau thanks you again for this opportunity to speak for our members. Please remember our concerns when you return to D.C.



## *Greater Yellowstone Coalition*

Testimony of

Louisa L. Willcox

Program Director of the

Greater Yellowstone Coalition,

on behalf of

Wild Forever,

a collaborative grizzly bear project of

The Wilderness Society, Sierra Club, Sierra Club Legal Defense Fund, National

Audubon Society and the Greater Yellowstone Coalition

before the Senate Environment and Public Works Committee on the

Reauthorization of the Endangered Species Act

July 23, 1994

Ronan, Montana



Good morning, Chairman Baucus. My name is Louisa Willcox and I serve as Program Director of the Greater Yellowstone Coalition (GYC) based in Bozeman, Montana. I appreciate the opportunity to submit testimony today on behalf of Wild Forever, a collaborative project of The Wilderness Society, Sierra Club, Sierra Club Legal Defense Fund, National Audubon Society, and the Greater Yellowstone Coalition, to conserve and restore the grizzly bear in the lower-48 states.

First, I would like to thank you for your leadership on and commitment to one of America's most far-reaching conservation laws, the Endangered Species Act (ESA). Without the safeguards of the ESA – and the efforts of many state and federal agencies and others to implement its provisions – we might be here today to mourn the loss of species such as the bald eagle, grizzly bear and black-footed ferret. We support your efforts to reauthorize the Endangered Species Act, and we would like to suggest a few improvements and strengthening amendments to S. 921.

Second, we appreciate your interest in hearing Montanans' views firsthand today, and we look forward to continuing a dialogue on how best to conserve Montana's wildlife heritage as we work to reauthorize the ESA.

### Grizzly Bear as Ecological Barometer

Because of its wide-ranging behavior, and utilization of a diverse mix of habitat types – which can change dramatically from year to year – the grizzly bear is a sound measure of ecosystem health in the Northern Rockies. It is no accident that bears are absent from 98% of their former range in the lower 48, but that they persist here in the Northern Continental Divide and Greater Yellowstone ecosystems. Although now reduced to 1% of its former numbers of 100,000 animals that roamed at the time of Lewis and Clark's exploration of the American West, grizzly bear population estimates still number more than 400 in the state of Montana – which indicates that these ecosystems are still relatively intact. Intensive development and degradation of habitat elsewhere has brought bears into conflict with humans, where bears inevitably lose.

As scientists continue to investigate the complexities of ecological function, and as agencies pursue new principles of "ecosystem management," it is becoming increasingly clear that habitat necessary to sustain grizzlies is also quality habitat for big game such as elk and deer, and many non-game species. Conversely, habitat practices which are harmful to bears, such as excessive road building and the cut-and-run harvest approach of Champion, tend to have adverse effects on other wildlife as well. For these reasons, in its 1986 report on the Greater Yellowstone Ecosystem, the Congressional Research Service recommended that management efforts center around protection of the grizzly and its habitat as an indicator of the health of the entire ecosystem.

### Healthy Ecosystems, Healthy Economies

Much has been said that is misleading about the relationship between grizzly bears, jobs and the economic well-being of the communities in Montana and elsewhere in the Northern Rockies. I would like to spend a few minutes here today to address some of these misconceptions.

In the counties of the Greater Yellowstone Ecosystem where I live, we have witnessed an economic boom over the last 20 years, with total employment and personl income growing faster than elsewhere in the nation. Nearly 75,000 new jobs have been created between 1970 and 1991, and new businesses grew by over 2,000 over the last 10 years. Along with the job growth over the past 20 years came a per capita income increase of 35%. Most of the newly created jobs have been in the service (including insurance, medical services), retail and government sectors – at a time when agriculture, mining and manufacturing have remained stagnant or in some areas have declined significantly. Newly established businesses are small (one to nine employees), but salaries are roughly on a par with traditional manufacturing and timber jobs in the area.

I'm enclosing for your review today a copy of the county-by-county economic profiles that GYC and The Wilderness Society recently completed for the 20 counties of Greater Yellowstone; in this document, we rely primarily on figures from the Department of Commerce, Bureau of Economic Analysis. These figures, combined with earlier analysis and research by Dr. Ray Rasker of The Wilderness Society and the interviews conducted as part of GYC's Greater Yellowstone Tomorrow Project, indicate that the new businesses created in Montana are based on the high quality of life, clean air and water, scenic beauty, opportunities for recreation such as fishing, hunting and skiing, low crime rate and wholesome rural character.

It should be clear from these figures that the Montana entrepreneur, who is the foundation of the growth currently occurring in this portion of the state, is not a "hamburger flipper" working for minimum wage, but a highly paid professional who comes here with a recognition and appreciation of the environment. Economists frequently make much of the fact that Glacier and Yellowstone – whose names are synonymous with bears – draw millions of people annually who spend considerable money in the region. For example, last year tourists generated \$165 million in Flathead County alone, and local polls indicate that wildlife was the top reason for traveling there. These dollars are significant, but they pale by comparison to the economic contribution of the growing number of people living here now and moving to this region to live and work.

Confirming this pattern is a recent poll conducted by the Spokane Spokesman Review, which showed that a vast majority of those polled in the Spokane area supported reestablishment of the grizzly bear in the Selway-Bitterroot Ecosystem in Central Idaho. Thus, it should be clear that in a

discussion of restoring endangered species in Montana and elsewhere in the Northern Rockies, it is not a debate between jobs vs. the environment, but a debate about how to have jobs in the environment.

### Challenges to Grizzly Bear Recovery

Since John and Frank Craighead's pioneering work on grizzly bears in the 1960s, we have learned a lot about how and why bears die, and what is needed to ensure their survival. In response to the compelling biological information gathered on these subjects, significant and positive steps have been taken by federal and state agencies, which have reduced some of the most pressing threats to grizzly bear persistence and recovery. These steps include: 1) improvement in storage of human foods and refuse, which had led to grizzly habituation and unnecessary mortality; 2) reduction of domestic sheep and grizzly conflicts, through voluntary agreements with permittees and exchange of allotments to areas outside bear habitat; 3) education of the public by federal and state agencies on how to live with bears and share their habitat; 4) halting of the grizzly bear hunt in the Yellowstone and Northern Continental Divide Ecosystems until true recovery of the populations is achieved.

While these steps have been critically important, without the implementation of other needed habitat conservation measures, the grizzly bear has slim chance of long-term recovery. Scientists believe that a balance between the needs of humans and grizzly bears is possible if additional habitat standards are adopted and implemented. On public lands, much of the impact of human activities in grizzly habitat could be alleviated by:

- 1) protection of remaining roadless areas which provide important security habitat;
- 2) limitation on roading and human activity levels to scientifically based road-density standards on public land;
- 3) protection of travel corridors between existing populations, such as the Cabinet-Yaak and Northern Continental Divide, to avoid further isolation of small island populations of grizzly bears, and to maintain long-term genetic diversity necessary to ensure the survival of these populations.
- 4) ensuring that logging and other development activities are sustainable and compatible with grizzly habitat needs. In the Northern Continental Divide and Cabinet-Yaak ecosystems, for example, the Forest Service should: a) rely on its existing 4,000 miles of road rather than building costly and unnecessary roads that adversely affect grizzly bears; b) recalculate its harvest levels downward on the Kootenai to actual rather than inflated "phantom" trees; and c) include consideration of grizzly recovery needs in development of the Allowable Sale Quantity on the Flathead.

Unfortunately, the recently revised U.S. Fish and Wildlife Service (USFWS) Grizzly Bear Recovery Plan failed to incorporate these recommendations, thereby proscribing rather than averting another "species train wreck." In fact, despite extensive biological criticism of an earlier draft, the final plan eliminated the only firm habitat standards proposed, which would have reduced the impact of roads. Furthermore, the plan ratifies existing recovery zone boundaries, leaving out important current on potential habitat. And, the plan would declare the grizzly bear recovered at the same levels, with the same uncertainties, that prompted listing of the population under the ESA in 1975.

We are enclosing for your review an alternative approach to the recovery plan, written by Mark Shaffer of The Wilderness Society, who developed one of the first population models of Yellowstone grizzly bears. If adopted, this plan, we believe, would have restored the grizzly bear – and might avert other looming species crises in the Northern Rockies.

It is important to note that these recommendations: 1) affect mostly public lands management and 2) are not original. Most of these recommendations were developed out of the extensive research done in the South Fork of the Flathead, Cabinet-Yaak, and North Fork of the Flathead by state and federal officials, and in Yellowstone by the Interagency Grizzly Bear Study Team. We believe these are conservative, scientifically based steps which if taken now could shorten the time it takes to recover the bear and remove it from Endangered Species Act protection.

#### Role of Public Lands Subsidies

One further recommendation would be to address the subsidies on resource extraction on federal lands that can contribute to the imperilment of sensitive species. In a recent report by The Wilderness Society and Environmental Defense Fund, "The Living Landscape: Taxpayers' Double Burden," the authors demonstrate how taxpayers pay twice: first for resource extraction on public land at an average of \$1 billion a year, and second, for efforts to recover species damaged by subsidized logging, hardrock mining, recreation, livestock grazing and water development. Using U. S. Fish and Wildlife Service data, the authors estimated these recovery costs at \$136 million or more. Two species identified in the report that occur in Montana and are adversely affected by such subsidized development are the grizzly bear and pallid sturgeon.

#### Public Education Insufficient about Endangered Species Needs

Much could be done by USFWS to improve the level of dialogue and understanding in the affected communities in Montana and elsewhere about what endangered species recovery needs mean on the ground, and how they could be implemented fairly and with sensitivity to local concerns. I would like to bring up one example of the Targhee National Forest, where GYC has endeavored to expand its discussion of grizzly issues to include local members of the logging community and the economic development councils of Fremont and Teton



Counties. Here, the Idaho portion of the Yellowstone grizzly population had nearly become extinct as a result of excessive road-building and clearcutting on the Targhee. We and other members of the conservation community in Idaho, Idaho Department of Fish and Game, and eventually the U.S. Fish and Wildlife Service, sought to improve the situation through a program of road closures on the only forest in grizzly habitat in the lower-48 states that had no road density standards and some of the highest road densities (6 miles/square mile). Unfortunately, neither the U.S. Fish and Wildlife Service nor the Forest Service took any kind of leadership role in initiating or pursuing a dialogue with local timber operators and others who would be affected.

As confusion and frustration mounted on this issue, GYC and the local Timber Association got together and formed a community task force, which has held about 15 meetings and three field trips over the past 15 months to discuss timber, roading and grizzly issues. We have brought in grizzly experts from the Interagency Grizzly Bear Study Team to explain the complex issues around bear security, cover, road densities, and access management.

While we believe this dialogue has been productive and has resulted in a better understanding of grizzly recovery needs among all involved, we maintain that with its authority to implement the ESA, the federal agencies should be leaders in this effort. Such involvement could go a long way toward: 1) improving local understanding of the scientific issues involved and necessary steps, such as road closures, to recover endangered species; 2) educating the public about the role of USFWS in these efforts and how ESA works in a site-specific situation; 3) explaining the links between recovery of endangered and non-endangered species, and the benefits of restoring endangered species for other wildlife. The proactive management measures that you outline in S. 921 should help address these concerns.

### Summary

Instead of current plans such as the U.S. Fish and Wildlife Service's Grizzly Bear Recovery Plan, which are likely to lead eventually to the extinction of the species, we believe that both grizzly bears and humans deserve better. With the institution of these recommendations, we can be confident that the grizzly bear and other wildlife will be part of a natural heritage we will leave to our children and grandchildren.

We would like to take a moment to acknowledge the work of the Montana ESA working group. The recognition by this group of the importance of responding to species concerns before they become real crises is particularly insightful and timely. With 88 new candidate species in the state, there are some real opportunities to get ahead of the extinction curve in Montana. We look forward to continuing this dialogue.

Finally, we urge you to consider adoption of the strengthening amendments

included in the attached list, to protect endangered habitat and ecosystems, close legal loopholes in the ESA, expand appropriations to ensure implementation and to provide ongoing technical assistance to affected landowners. With these strengthening amendments, we can ensure that Montana is not only known as the "last best place," but the first place to demonstrate how to live sustainably in healthy ecosystems – with top predators such as grizzly bears.

We thank you for the opportunity to testify here today. We would be happy to answer any questions.

Specific "Conservation Amendments to S.921," proposed by Louisa Willcox for the Wild Forever Grizzly Bear Project

- Provide greater protection for species that are candidates for listing by placing an affirmative duty on federal agencies to conserve such species under Sections 2(c) (1), 7(a) (1) and 7(a) (4).
- Restructure federal programs that currently subsidize destruction of biological resources to instead encourage long-term sustainable environmental and economic sustainability.
- Require that refusals to designate critical habitat be supported by specific facts demonstrating that the designation is "not prudent" or the habitat is "not determinable."
- Clarify that any modification of critical habitat that reduces a species' chances of survival or recovery in the wild is prohibited under Section 7 (a) (2), and similarly, any action that reduces a species' chances of survival or recovery in the wild is deemed to jeopardize that species under Section 7 (a) (2).
- Mandate that recovery plans list federal actions inconsistent with species recovery, and direct applicable federal agencies to actively implement approved recovery plans as a component of their Section 2 (c) (1) and 7 (a) (1) affirmative duties.
- Require the Fish and Wildlife Service and National Marine Fisheries Service to consider the cumulative effects of all related federal and non-federal activities when consulting or conferring under Section 7, while still maintaining Section 7 requirements for individual actions.
- Mandate that incidental "take" permits for listed species not be granted unless the permit is found to be consistent with a federally-approved plan or, if a recovery plan does not yet exist, with its functional equivalent.
- Establish stronger scientific criteria for what constitutes species recovery, and require such criteria to be fully reflected in approved recovery plans in the form of specific and mandatory actions to promote recovery.
- Significantly increase appropriations to implement the ESA.
- Expand the current cooperative agreement provisions of Section 6 to clearly spell out the role of federal involvement, oversight and funding for state-run species conservation programs.
- Provide greater incentives to private landowners.
- Establish an Office of Technical Assistance in every Fish and Wildlife Service field office to assist private landowners in complying with the Act.
- Clarify that "harm" of a listed species clearly includes degradation to habitat that results in a disruption of the species' essential ecological, behavioral and reproductive patterns.
- Subject the Section 7 consultation and conference processes to greater scientific scrutiny.

TESTIMONY BEFORE THE UNITED STATES SENATE COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
HONORABLE MAX BAUCUS, CHAIRMAN

*REAUTHORIZATION OF THE ENDANGERED SPECIES ACT*

BY PEGGY WAGNER  
REPRESENTING

MONTANANS FOR MULTIPLE USE  
ON BEHALF OF NUMEROUS

MOTORIZED RECREATION GROUPS IN THE STATE OF MONTANA

COMMUNITIES FOR A GREAT NORTHWEST  
FLATHEAD CYCLE RIDERS, INC.  
FLATHEAD SNOWMOBILE ASSOCIATION  
GALLATIN VALLEY SNOWMOBILE ASSOCIATION  
MONTANA 4X4 ASSOCIATION  
MONTANA SNOWMOBILE ASSOCIATION  
MONTANA TRAIL VEHICLE RIDERS ASSOCIATION  
OVER SNOW ACCESS  
SOUTH FORK SNOWMOBILE ASSOCIATION

Mr. Chairman, members of the subcommittee, my name is Peggy Wagner and I am a member of the Board of Directors of Montanans For Multiple Use, a grassroots group that represents over 2500 multiple users throughout Montana. I am here today speaking on behalf of my membership and the Montana motorized recreation groups listed on my testimony before you.

The groups on who's behalf I testify today, believe it is time for common sense changes to the Endangered Species Act (ESA). The above groups have experienced irreparably damage to motorized recreation opportunities because of ESA.

Today, environmental laws are in place and our society faces significant economic problems and challenges. Further, recent application of the Endangered Species Act has demonstrated that it is a law in serious trouble; it is failing those who are dependent on our economic structure, such as businesses, labor industries, recreationists and hundreds of communities.

The reauthorization, must not simply extend the law, but instead undergo a comprehensive review. The end result must be amendments to reaffirm the fundamental goal of conserving endangered and threatened species, while assuring that the decisions taken to attain this goal are legitimate and based on sound science, to assure that the decisions taken to attain this goal truly balance species conservation requirements with the economic and social needs of the human community.

It is the most severe, least flexible of all environmental laws, and referred to by landowners, recreationists, and people who have been affected by it as the "flawed law" or "a law that has gone haywire". Although environmental activists often refer to it as the "pit-bill of environmental laws."



Federal officials who's job is to implement the ESA (or state and local government regulators pressured by federal officials) have in many cases informed private landowners, with specific and definite threats of criminal and civil prosecution, that the ESA prevents them from using their land as they have intended. The loss of American dreams and the loss of property values inevitably follows and many landowners have little recourse but to sell.

The use of the ESA, here in Montana, has had an adverse impact, not only on private property owners, but also on recreationists. Due to assumptions dictated by government agencies, areas such as the Flathead National Forest have experienced thousands of acres of prime recreation areas as off limits to motorized recreation.

First, I would like to define recreation users of our public lands in Montana. Motorized recreation is not limited to snowmobiling, trailbike riding and ATV's. We must not forget they also provide back country access for other recreation activities on public lands: huckleberry picking, woodgathering, mushroom picking, scenic driving, fishing, photography, etc. These are also "motorized recreationists" that come from all walks of life, young families and retirees, able-bodied and handicapped.

Many senior citizens and handicapped find it extremely difficult, if not impossible, to access areas without motorized equipment. The trails into our public lands are vital to their economic and recreational use of our national forests.

Second, I would like to point to the importance of motorized recreation to Montana and to its communities. Snowmobiling, for example, has been a traditional non-resident tourist activity in Montana long before tourism became an industry funded by our bed tax. While the Institute for Tourism and Recreation has not tracked tourist spending on trail bikes and ATV's, it has found that non-resident snowmobilers are, and I quote, some of the largest spenders, end quote. The Institute has also found that, quote, the economic impact to the regions surrounding Yellowstone Park, Seeley Lake and Lincoln is relatively large, end quote. On the Flathead Forest alone, figures show that 77% of the recreation that takes place there is motorized recreation. Although I am sure some of the panelists here today would dispute these facts even though they come directly from Flathead National Forest figures.

I would like to give you a little history on the land base of one of the national forests here in Montana that has felt the impacts of the ESA. The Flathead National Forest is comprised of 2,336,000 acres of which 1,069,933 (50%) is currently designated wilderness. This of course does not include the 1,013,572 acres in Glacier National Park. The Flathead National Forest Plan provides for an operating land base for motorized recreation of 32 percent. Given these figures 32% of the land base equals 760,000 acres. The Flathead National Forest Plan goals also states, "provide a range of quality outdoor recreation opportunities within a forest environment that can be developed for visitor use and satisfaction." And, "provide a range of quality recreation opportunities, including motorized and nonmotorized, in an undeveloped forest environment." Snowmobiling has been taking place on the Flathead National Forest since the mid 1960's. The first dealerships were established in and around Columbia Falls because of its proximity to the most desired areas to snowmobile. The early snowmobilers were naturally establishing their play areas by using the same areas they used in the other seasons of the year. Snowmobile cross-country races were first held on the roads surrounding Hungry Horse Reservoir beginning in the mid 1960's. The more popular areas to be ridden were the treeless alpine basins and then the tree thinned areas remaining from logging activities. The Flathead Snowmobile Association was formed in 1972 to address the needs and concerns of snowmobiling. The first trail grooming began about the same time and the trail system has grown since then to amount to around 200 miles of snowmobile trails in the Flathead today.

Forests, such as the Flathead National Forest in Montana, are noted for their array of outdoor recreational opportunities. We have a very active, outdoor-oriented population that lives in the State, partaking in such activities as snowmobiling, berry picking, scenic driving, hunting, firewood gathering, camping, and all terrain vehicles.

Unfortunately, recent decrease in access for motorized recreation on areas such as the Flathead National Forest has been devastating for these types of opportunities, especially access for our many handicapped and senior citizens, that rely on motorized vehicles to access our public lands for recreation. We believe the social and economic impacts of closing roads to motorized recreation has not been adequately addressed in the past.

Like many others, I am a long time resident of Montana, and until recently enjoyed the array of recreational opportunities literally out my back door, but find myself frustrated because of the lack of access to our public lands. I have personally spoken with business owners here in the Flathead that has received comments from tourists, especially out-of-state hunters, that they will have second thoughts about returning to the Flathead Valley because of the access restrictions taking place. When residents and out-of-state people look for other areas for recreational opportunities we perceive this will have an impact on the local economy. Yes, not only do the local residents need access to our public lands but so do tourists.

Many people throughout the nation, hear of great success story of the recovery of the Grizzly bear in Northwest Montana. This is true, the grizzly has made a remarkable come back here in Northwest Montana. However, the bear made that come back with open roads and with our ability to manage our forest through forest harvesting. Unfortunately, now that the grizzly is recovered, Montanans now face thousands of road closures and virtually no forest management at all.

We disagree with the concept of road closures as a tool for wildlife management when past history shows that motorized recreation can coexist in areas such as the Flathead National Forest. Wildlife officials in Montana have stated that deer, elk and mountain lion populations are at an all time high. But while elk herd numbers are up generally, they're down slightly in wilderness areas. The Grizzly bear has achieved a 100% recovery goal in certain areas that snowmobiling and trail bike riding has taken place for the past 30 years. In contrast only a 30% recovery in the Scapegoat Wilderness area and a 60% recovery in the Mission Mountain Wilderness.

Another misleading justification is the impact that motorized recreation has on the land. Programs are in place on all forests to maintain and manage the use of forest trails--often resulting in the expense of time and money by recreationists such as those I represent here today. We believe the public's input must be insured and not ignored to retain the traditional and historic motorized uses those areas have had. The public wants to retain their rights for input on management of these areas and Congress gave us the direction on how this would be managed through the passage of the National Forest Management Act, which is currently not being followed.

These road and area closures have been based on assumptions and opinions and not valid scientific data proving the fact that closure and rehabilitation of the existing roads are necessary for the long term survival of the bear. The Montana Department of Fish, Wildlife & Parks are into the fourth year of a 10 year Grizzly bear study up the South Fork drainage. The South Fork Grizzly Bear study is one of the studies used to guide the Flathead National Forest. The South Fork Grizzly Bear study is still ongoing and we feel it is not based on scientific research. The South Fork Grizzly Bear Study states that, "females used high elevation unroaded habitat greater than available, adult females used low elevation roaded habitats less than available, males used low and high elevation habitats as available, whether roaded or not. Female grizzly bears used zero total road density habitats greater than expected while males used these unroaded habitats as available." "Unless a road has completely revegetated, managers should assume some level of human use is occurring along closed roads

and grizzly bears will respond to that use." But on the contrary other studies conducted by Russell et al. (1979) found that in Jasper National Park, "females with young and independent subadults actively avoided adult males. Adult males tended to frequent valley bottoms or lower slopes while females and subadults spent a disproportionately greater time on upper slopes and side basins with readily available escape routes." "Females with cubs were subordinate (inferior) only to adult males which they actively avoided." (reference Grizzly Bear Compendium, sponsored by The Interagency Grizzly Bear Committee, 1987, page 37, section Social Relationships in Dispersed Populations paragraph 7 & 8). Another study conducted by McLellan and Mace (1985) found, "that grizzly bears were only minimally displaced by vehicular activities in British Columbia, Canada, and that displacement was restricted to daylight hours." (reference "Final Programmatic Environmental Impact Statement, the Grizzly Bear In Northwestern Montana,

The Flathead National Forest is not only home to the threatened grizzly bear, but is also the home of the endangered gray wolf. We were told many times by biologists of U.S. Fish & Wildlife Service that the recovery of the wolf in this area would not impact our recreation opportunities or forest management. But according to a recent timber sale decision notice (Glacier View Ranger District, Hornet/Wedge timber sale)... "34 miles of road throughout the project area would be rehabilitated (completely taken out) during and after the sale would restrict motorized and walking access." "...would discourage rather than invite travel by humans." This project is just one of many that is planned. Between the Tally Lake and Swan Lake Ranger Districts there is another 250 miles planned. The 1 mile per square mile open road density that is recommended for wolf recovery was established from a study done in Wisconsin. Unfortunately, Wisconsin's terrain is not even close to Northwest Montana's terrain.

Hundreds of people are victims to these unnecessary regulations. Who are they....the berrypickers, woodcutters, snowmobilers, trail bike riders, hunters, campers, fishermen, scenic drivers, tourists, loggers, mill workers, and let us not forget the handicapped and senior citizens, who are not as fortunate as many of us. The back country users, such as hikers and horse riders have even felt the effects of this insanity. Back country users will be required to buy expensive bear proof containers to store their possessions in or hang their possession ten feet from the ground and four feet from the base of a tree. Why....so the bear is not tempted to become habituated. Even though this requirement was not needed during the recovery process.

The Flathead National Forest has historically provided approximately 40 percent of the timber processed by Flathead County mills. The Flathead National Forest Land and Resource Management Plan states a 100 million board feet allowable sale quantity. Not so today. Because of appeals by special interest groups, using the ESA as the tool, the Flathead National Forest last year only offered 3.5 million board feet. Three million of this was post, poles and firewood, the remain .5 million board feet was logs that managed to make it area mills. Ironically, if you take time to view the Flathead National Forest you will see thousands of dead and dying trees. This resource is going to waste at a time when our local communities need economic security and our forests need healthy management. There is absolutely no reason why American families should have to be out of work, going hungry and living in tents, especially when there is dead, diseased and dying resources going to waste. In the long run we must ask ourselves, is all this nonsense of stopping forest management, really benefiting our wildlife populations? I think not! If we don't manage our forests for dead, diseased and dying timber, nature will through wildfires!

The Endangered Species Act is and has always been a flawed law. The act not only does little to actually benefit sensitive species, but also creates more problems by failing to include humans in the equation and take into consideration the social and economic impacts it creates as a result of the mandates set forth by an irresponsible Federal Government.

For instance the Federal government is currently being sued to list the bull trout as an endangered species. Montanans For Multiple Use urges these government agencies to consider only sound science data and NOT politics when considering the recovery efforts of the bull trout. Many times in the past, our State's economies and recreation have been affected by biologists' assumptions and opinions (as with the recent South Fork Grizzly Bear Study). We also feel that all land base including wilderness areas should be studied and not just areas were land management takes place. For example the 1991 Monitoring Report for the Flathead National Forest Land and Resource Management Plan states that there are streams in wilderness areas that are also declining in bull trout populations. Lodgepole Creek is down 72%, Morrison Creek down 55%, and Granite Creek down 32%. All these areas lie within the Great Bear or Bob Marshall Wilderness. Areas that have never been logged, mined, etc. Yet areas such as the North Fork of the Flathead, that has had recent land management practices has shown less decreases.

The Swan Lake drainage has one of the highest redd counts and this area has been heavily logged in the past. MFMU has a concern that not only human development has played a role in the decline of bull trout but so may have other fish species. Brook trout will spawn with bull trout which produces infertile offspring. Sound science would no doubt prove that lake trout feed on young bull trout which may have an affect on bull trout populations. In the Flathead River lake trout are now being caught miles above the Lake which never use to occur.

MFMU urges the USF&WS and the FW&P to consider all available recovery methods before listing the bull trout on the Endangered Species List. We fear once the bull trout is listed as endangered it will be next to impossible to delist them. History has proven this with species such as the grizzly bear.

MFMU is also concerned with the aspects the recovery of the bull trout would have on other species of fish such as the cutthroat, salmon, brook trout, etc. Careful consideration must be taken into account for all species of fish. As with salmon and bull trout in the Columbia River system, currently water release for salmon downstream will hinder bull trout, an act that contradicts itself. We must not endanger one species to save another. We are also concerned with fishing opportunities that would be jeopardized (fish in the same waters) for others species.

MFMU believes one of the most detrimental affects to the bull trout population decline has been from the introduction of the non-native opossum shrimp. The Fish, Wildlife & Parks introduced these shrimp in 1981 to enhance our fish populations. The state should concentrate on the population control of these shrimp to enhance the bull trout population along with other species of fish.

It has been documented that every 7 years there is a downtrend in bull trout populations. This should be considered even before a management plan or listing is considered. The bull trout population could very well be in this downtrend and the State could be wasting millions of dollars of tax payers money to recover the bull trout if this is the case. The drought conditions Montana has been experiencing the last few years (except of course this year) could also be a factor in bull trout declines. These conditions on stream flow changes seem to be natural fluctuations. MFMU believes that replanting bull trout in streams and lakes would be beneficial to the recovery of the bull trout. The FW&P should immediately start a hatchery program to insure healthy genetic strains.

If the bull trout is listed as endangered, this would have a detrimental affect on our logging industry (45% of the Flathead area's economy is timber related). Columbia falls Aluminum Plant (40% of the Flathead area's economy) would also be in threat of a shut down because of the listing of the bull trout. Both of these industries have recently already cut back on their work force. Consideration of Montana's communities with aspects to the economics, recreation, custom and culture, community stability, ranching, farming, mining, logging.



The delisting process doesn't seem to be a functional part of the act. As one of Montana's own biologists once stated, "self-interested environmentalists and bureaucracy keep species locked on the endangered species list even when the animals are safe from extinction". "It's about emotion and money, in fact it's big business". The problem is that special-interest groups use big, charismatic animals like the grizzly bear and wolf to attract attention and donations.

On July 9, 1992, Montanans For Multiple Use filed a petition with the U.S. Fish & Wildlife Service to change the status of the grizzly bear from threatened to recovered in the Northern Continental Divide and Yellowstone Ecosystems of Montana. The information MFMU used on the basis of this petition came directly from Fish, Wildlife & Parks data. FW&P data shows that the grizzly bear population in these two ecosystems are recovered.

MFMU anxiously awaited a reply on the status of the petition and after several letters urging them to look at it, the U.S. Fish & Wildlife Service contacted MFMU 14 months after the petition was filed. And what was their reply you ask? *"The Service finds that you did not provide substantial scientific or commercial information to indicate that reclassifying grizzly bear populations in the Northern Continental Divide ecosystem or Yellowstone Grizzly Bear ecosystem from threatened to recovered may be warranted"*. Does that mean that the U.S. Fish & Wildlife Service, the Fish, Wildlife & Parks, and biologists are not providing the public with *scientific or commercial information*?

What is really ironic, Jim Rathbun from Libby, filed a similar petition to delist the grizzly in the Northern Continental Divide, the Cabinet-Yaak, the Selkirk, and the North Cascades ecosystems. Jim also received a letter from the U.S. Fish & Wildlife Service (nine months after he filed) and guess what response he received...you guessed it, the exact same letter MFMU received (name & address were the only difference).

Now the form letters the U.S. Fish & Wildlife Service is mailing does not stop there...you see, the Board of Directors of Apache County, Arizona filed a petition to delist the Mexican Spotted Owl from the Endangered Species list. The U.S. Fish & Wildlife Service sent them the same letter also.

I guess they figure they can intimidate us by saying, *"you did not provide substantial scientific or commercial information"* and it just might have worked, if there wasn't so many of us out here communicating on a regular basis and learning that we all were receiving the same letter from the USF&WS.

LISTED BELOW WERE THE REASONS  
FOR MFMU'S PETITION:

- A. **Grizzly Bear Recovery Plan** criteria established a recovery goal for the Northern Continental Divide Ecosystem (NCDE) of 560 grizzly bears. The population estimate in the **1986 Grizzly Bear EIS** by the **Montana Department of Fish, Wildlife & Parks** of 549 to 813 grizzly bears indicates the NCDE population is likely recovered.
- B. **Federal Register/vol. 57, no.76/ Monday April 20, 1992.** (U.S. Fish and Wildlife Service 1990) subgoals for the Yellowstone Ecosystem are 15 females with cubs over a running 6-year average, and known human-induced mortality not to exceed a total of 7 grizzly bears or 2 adult females on a running 6-year average. From 1980 to 1990, the unduplicated females with cubs in this area averaged 16 per year, and female mortality average 2.4 per year. (Knight et al 1991) the numbers of females with cubs reported remained fairly stable or increased over the years and female mortality remained stable. There are more than 200 grizzly bears in the Yellowstone Ecosystem. This data indicates that the grizzly bear in the Yellowstone Ecosystem is unlikely to go extinct in the near future.
- C. **Federal Register/vol. 57, no.76/ Monday April 20, 1992.** (USF&WS 1990) Subgoals for the NCD Ecosystem are 10 females with cubs within Glacier Park and 12 females with cubs outside the Park over a 3-year running average and known mortality not to exceed 14 total bears or 6 females annually over a running 6-year average. In the NCDE, the average number of unduplicated females with cubs since 1987 was 24 per year and annual female mortality averaged 5.4 per year. The numbers of females with cubs remained fairly stable or increased and female mortality remained stable or decreased. The **Grizzly Bear Recovery Plan** (USF&WS) 1992) included a grizzly bear population estimate for the NCDE of 440 to 680 bears additionally, the bear population of the NCDE is contiguous with the larger population of grizzly bears in Southeastern British Columbia. This data indicates that the grizzly bear in the NCDE is unlikely to go extinct in the near future.
- D. We refer you to **Amendment #10 to the Flathead National Forest Land and Resource Management Plan** where it states on Page III-6, "the Montana Department of Fish, Wildlife & Parks estimates grizzly bear recovery at 100% for the Red Meadows and South Fork areas (both in the NCDE)".
- E. The USF&WS has reviewed the best scientific and commercial information available for the Grizzly Bears in Yellowstone and NCDE, has exceeded it's goals for grizzly bear recovery and should be in pursuit of de-listing the grizzly bear at this point in time as they are recovered in both Yellowstone and the NCD ecosystems.
- F. For grizzly bears, no quantitative loss estimate was derived due to the lack of historical populations information, yet the grizzly bear as a species (*ursus arctos*) currently occupies more of its world-wide historical range than many other species.
- G. The NCDE population is not a biologically isolated population, in fact it is a continuation of the North American population (over 60,000) which extends from Alaska to Montana and possibly to Wyoming. Further, populations segments within the NCDE are not biologically isolated from each other. Thus, bear populations are representative of the total population not one area.
- H. The Montana Department of Fish, Wildlife & Parks position is that when the grizzly bear population in any ecosystem in Montana can be judged recovered based on the best data available, then that

ecosystem population should be de-listed. It is the intent of the Montana Department of Fish, Wildlife & Parks to manage for recovery so that grizzly bears can be de-listed and management can be reverted to the Multiple Use and Sustained Yield Act (1986 Grizzly Bear EIS Montana Department of Fish, Wildlife & Parks).

- I. Historical estimates of grizzly bear population in Montana are lower than our current estimates, populations have increased along with an increase in efforts to determine population size.

As petitioners Montanans For Multiple use believes there is substantial information to change the status of the grizzly bear in both the Yellowstone and North Continental Divide Ecosystems to recovered status. We too believe that many other ecosystems could likely be considered if they too had quality studies done on them to ensure that research did not hinder their present population and growth capabilities.

\*\*\*\*\* END OF PETITION \*\*\*\*\*

## **MONTANANS FOR MULTIPLE USE'S RECOMMENDATIONS FOR AMENDMENTS TO THE ENDANGERED SPECIES ACT**

1. *Use only a biological and numerical definition of endangered species.*

**BIOLOGICAL DEFINITION:** Only pure species can be listed. No listing based solely upon subspecies, distinct populations or hybridization.

**EXAMPLE:** In 1944, Stanley Young and Edward Goldman listed 24 sub-species of the gray wolf. Today biologists feel there are no more than 5 sub-species of the gray wolf. Even these 5 sub-species should be viewed with caution as the biologists cannot tell them apart. The same can be said of the northern spotted owl and California spotted owl.

**NUMERICAL DEFINITION:** Only those species actually threatened with extinction can be listed.

**EXAMPLE:** The gray wolf population of North America numbers between 40,000 and 60,000 wolves. Due to national boundaries and "distinct populations" listings, wolves in Alaska and Canada are not considered in wolf population counts. Thus, the wolf, while in no danger of extinction, is "endangered" throughout the continental U.S., with the exception of Minnesota where it is listed as threatened. The same problem exists with bald eagles and grizzly bears (note: there are over 40,000 grizzlies in North America).

2. *The socio-economic impacts of a listing must be considered.* The current law makes no such consideration.

**EXAMPLE:** Land values in an area of Texas fell an estimated \$300 million due to an ESA listing of a songbird - the golden-cheeked warbler. Also, the impact of spotted owl listing on the timber industry in the Pacific Northwest. The Wall Street Journal one reported a 25% cost increase in wood products which was directly related to the listing of the spotted owl. The cost of home insurance coverage has also skyrocketed the past couple of years. Thus, the nation, not just loggers, is impacted by the ESA listing of the spotted owl.

Because of the listing of the salmon, electricity ratepayers have seen an increase in their bills, especially industries such as Columbia Falls Aluminum Company, which in turn had to cut back on their work force.

3. *There must be just compensation on any taking of private property.* The constitutional rights of citizens must be protected. If an endangered species occur naturally on someone's land, or if they are deliberately attracted to that land to aid in their recovery, inadvertent harm to the species should not be considered a violation of the act and a crime in any sense.

4. *Individuals must have the right to protect their livelihoods and control endangered species threatening their livelihoods.*

**EXAMPLE:** On the night of September 9, 1989, John Shuler of Dupuyer of Montana, saw a grizzly bear heading toward his flock of sheep. In order to protect his sheep he grabbed a rifle and ran toward



the sheep pen. After scaring three grizzly bears away, he turned and came face-to-face with a fourth grizzly bear. Shuler fired instantly. The next morning, Shuler went looking for the grizzly bear's carcass, but instead found the grizzly bear wounded but still very much alive. Shuler once again had to defend himself and this time the grizzly bear died. Following two days of hearings in Great Falls, Montana, the Department of the Interior's Administrative Law Judge ruled that a person cannot use deadly force against a grizzly bear, and later claim self defense, if he "intentionally placed himself in the zone of imminent danger" in which deadly force may be necessary". The judge acknowledged this because Shuler knew the bears were among his sheep, he should have never left the safety of his porch to protect his livelihood. Thus, an individual who kills a grizzly bear in self defense will still be subject to the civil penalty provisions of the ESA. John Shuler was fined \$4,000 in an action brought by the U.S. Fish & Wildlife Service, for protecting his private property and his life!

Endangered wolves, grizzly bears or eagles killing livestock cannot be controlled by the livestock owner. As you know a federal judge ruled that a person does not have the constitutional right to protect their property from an endangered species. In 1990, over 7,500 sheep and lambs were killed by eagles in the states of Wyoming, Montana and Colorado alone. The predation of livestock by endangered species have been countless over the past years.

5. *The ESA must recognize that extinction is a normal part of the natural evolutionary process.* The fossil record makes this abundantly clear. Failure to recognize this phenomena will result in wasting expertise and money on recovery programs doomed to failure by this natural process while people lose their jobs and go hungry.
6. *Time and Expenditure limits must be placed on studies and recovery plans.* The American taxpayer is entitled to fiscal responsibility of government agencies directed to saving endangered species.

**EXAMPLE:** Figures released a few years ago on the Bosque Del Apache Wildlife Refuge in New Mexico reveled that the whooping crane recovery had more than one million (\$1,000,000) in each bird.

The sockeye salmon is listed as endangered on the Columbia, Snake and Salmon rivers, this ESA listing affects 900 miles of river systems. The estimated cost for recovery program will be between \$200 million and \$1 billion dollars in the next five years. Who will pay for this program...the electricity ratepayers, farmers, river operators and commercial fishermen. Salmon is the only endangered species you can buy at the grocery store.

Four trash fish in Colorado - the squawfish, two types of chub and a sucker, which, until a few years ago were poisoned by the USF&WS, are now listed on the ESA. Their recovery is estimated to cost \$60 million dollars and impacts costs are over \$650 million. Meanwhile, in the State of Washington, anglers are paid \$3 by the USF&WS for every squawfish caught that measures over 11 inches.

7. *Accountability must be required of government agencies charged with saving endangered species.* This is in two areas: a) Standards must be set for best scientific and commercial data. b) Agency personnel must work with the average citizen and not against them.
8. *Private property owners must not be penalized for having prime habitat or rare species on their lands.* Landowners and developers should be secured in their property rights and receive full compensation for any of their land and only if they a willing seller.

9. Negative incentives must be removed and the act should be amended to provide positive incentives. To increase the populations of threatened and endangered species, the government should pay rather than penalize people to produce them. Such a program would be infinitely cheaper than taking billions of dollars of timber and private property, eliminating hundreds of thousands of jobs, and forcing huge numbers of people onto unemployment and retraining rosters.
10. Positive incentives should be incorporated into the ESA to encourage the government to delist species that are recovered. More times than not, recovered species are not delisted. We feel the main reason behind this, is that it keeps government biologists and programs funded which provides job security for them. Also, when a species is kept listed, this also provides a continuing tool for special interests groups to continue soliciting for donations and locking up public resources.
11. Listing should be based solely on sound science (not assumptions, opinions, could bes, or maybes) while requiring a concurrent release of economic analysis. The listing process should be open to public and scientific scrutiny.

EXAMPLE: The listing of the Northern Spotted owl was based on the assumption that the owl was at serious risk. According to a *NBC Nightly News* reported that aired September 17, 1993 despite what government scientists and environmentalists said three years ago, there is nothing rare or threatened about the Northern Spotted owl. It was reported that 600 birds have been banded and thousands of "new owls" have been found. Logging has been stopped almost completely in all old growth forests because it was *assumed* this was critical habitat for the birds, most of the birds banded and found have almost been entirely on private, timber-company lands which has been logged before. They are now discovering, the spotted owl, depends heavily on managed areas. The reason...the dusky-footed wood rat, which lives in forests that have been managed, is a primary food source for the owls. The news report when on to expose the truth from the National Audubon Society's encouragement to list the owl in the first place. The National Audubon Society was quoted saying, "So it's true; it's much more than the owl. It's the forest, and how we relate to the forest". Because of the listing of the Northern Spotted owl thousands of families have gone jobless and homeless. By the listing of the spotted owl and stopping the management of these lands our government has no doubt put the spotted owl in jeopardy.

12. The release of a species onto private property must require the owners permission.
13. States that receive funding under Section 6 must be required to establish private property protection laws.
14. All available recovery methods to be considered before the actual listing of a species.

The message to cut spending and decrease taxes at every level of government has been sent loud and clear by the American people and as one elected official to another, I urge you to listen. Please support the reasonable amendments we have listed to consider humans and the social and economic impacts on them when attempting to recover any species. If not, then repeal a very poor law that had good intentions and save the American people billions of dollars now and in the future.

The Endangered Species Act is and has always been a flawed law. The act not only does little to actually benefit sensitive species, but also creates more problems by failing to include humans in the equation and take into consideration the social and economic impacts it creates as a result of the mandates set forth by an irresponsible Federal Government. No one wants to negatively impact our environment or see any more species become extinct but it happens.

The message to cut spending and decrease taxes at every level of government has been sent loud and clear by the American people and as one elected official to another, I urge you to listen. Please support the reasonable changes I have mentioned to consider humans and the social and economic impacts on them when attempting to recover any species. If not, then repeal a very poor law that had good intentions and save the American people billions of dollars now and in the future.

Don't leave the future of our Nation with it's abundant supply of natural resources, in the hands of a bunch of misguided biologists and special interest groups that are looking out for themselves by creating expensive studies that will keep them employed and us broke forever. Let's responsibly manage our abundant natural resources instead of forcing third world countries to devastate their environment to meet the demands of an ever increasing, consumptive society.

We believe that there is a better solution to managing species than imposing a lock-out on motorized recreation and resource management. Motorized recreation and resource management can co-exist with our wildlife and ecosystems; there is room for every user and inhabitant in the forest and history has proved it.

**I stress upon each and every one of you on this committee, to remember the people I represent here today, are people who make a living and recreate. We believe it is time to put humans back into the environmental equation!**

That concludes my testimony on the reauthorization of the Endangered Species Act.

Thank you.



## Montana Audubon Council

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### Chapters:

Bitterroot Audubon  
Bitterroot Valley

Flathead Audubon  
Flathead Valley

Five Valleys Audubon  
Missoula

Last Chance Audubon  
Helena

Pintlar Audubon  
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Rosebud Audubon  
Miles City

Sacajawea Audubon  
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Upper Missouri  
Breaks Audubon  
Great Falls

Yellowstone Valley  
Audubon  
Billings

Testimony On Reauthorization of the Endangered Species Act  
Senate Committee on Environment and Public Works  
Ronan, Montana  
July 23, 1994

Chairman Baucus and Members of the Committee,

My name is Janet Ellis and I'm here representing the Montana Audubon Council. The Council is the coordinating body of Montana's nine Chapters of the National Audubon Society. Currently we have approximately 2,400 members statewide.

Thank you for inviting us to testify. The Montana Audubon Council supports a strong Endangered Species Act (ESA). We look forward to working with this Committee to ensure that the ESA reauthorization legislation that passes Congress carefully examines the facts on this issue, dismisses the rhetoric, and develops a thoughtful piece of legislation.

Today you have asked us to provide you with a "Montana perspective" on this important law. Because of the limited time, I will restrict our testimony to making two points:

1. We want to express our support for the multi-species approach to recovery efforts proposed in S. 921, the Baucus/Chaffee ESA reauthorization bill; and
2. Give you our perspective, based on our experience with the Montana Dept. of Fish, Wildlife & Parks, on the State of Montana's request to give states a more significant role in administering the Endangered Species Act.

Currently, Montana has 10 endangered or threatened species and 60 candidate species.

We strongly support the efforts in S. 921 to group species for recovery efforts. The bill does this through a variety of amendments to the current act. These amendments are good and necessary. In a state as large as Montana, with limited financial resources, we are sorely aware of how important it is to be as cost effective as possible.



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The Endangered Species Act decides what plants and animals need to be in the emergency room for health care. Giving species the attention they need when they are in critical condition is important. However, emergency room remedies are an expensive way to go.

By grouping species for recovery efforts, we can get much more bang for the buck. We can provide species that have similar needs with similar care. We can also practice "preventive medicine" on candidate species that look like, if we don't do something now, they may end up becoming threatened with extinction.

If you look at Montana, and the habitat types where our threatened, endangered and candidate species tend to be located, you will quickly come to the conclusion that several habitats need our attention. Probably the two most threatened habitat types are our riparian areas (including rivers, wetlands and lakes), where 23 (38%) candidate and 6 (60%) of our endangered species are found; and our grassland/sagebrush communities, where 15 (25%) candidate and 1 (10%) of our endangered species are found.

Managing our grasslands, riparian areas, and other habitats in a sustainable way makes a lot of sense. We feel that this approach is critical because if we continue to lose our rare plants and animals to extinction, our children will be left with a world with more weeds, insect pests, and deserts - and fewer songbirds, wetlands, and grizzly bears. As you are well aware, Montanans treasure all of our wildlife resources. We are proud of the fact that our state can still brag about having almost all the same species living here today that were present 200 years ago when this great nation was established.

We cannot emphasize enough how important it is to use a multi-species approach to endangered species recovery efforts.

The second point I want to talk about is the role of states in the administration of the ESA. Today you have heard testimony on the importance of giving states a greater role in the Endangered Species Act.

The Montana Audubon Council really doesn't care who is doing the work - just as long as it gets done. Our bottom line, however, is that whatever changes are made in the Act to accomplish a stronger state role, the ultimate goal of the ESA must be to do the best thing for the species. Our experience with the State of Montana indicates that they do not always have the best interest of a rare species in mind, and that politics, not science, often drives the state's management decisions. Let me explain.

With the exception of fisheries, when it comes to endangered species, it is our experience that the State of Montana has generally been more interested in a turf

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war with the U.S. Fish and Wildlife Service, than it has been in getting the best thing done for the resource - a fight between state versus federal control.

This antagonistic approach has been disconcerting and discouraging. When a species is listed on the endangered species list, the last thing that it needs is to be the victim of a turf war.

The State of Montana does have an endangered species act of its own, although no species has been added or taken from the list since the act was passed in 1973. We have four endangered species listed on Montana's list: gray wolf, black-footed ferret, whooping crane and peregrine falcon. The only effort to add a species to the state's list occurred in 1985, when the state attempted to list the white sturgeon. The Montana Legislature decided, for political reasons, not to grant further protection to this endangered species.

The Montana Department of Fish, Wildlife & Parks tells you that it has not been the lead agency in recovery efforts on any of the state - or federally - listed endangered species because "their hands are tied" by the ESA. It is interesting to us that if this is true, why do other states, such as Colorado and California, not seem to suffer from this problem?

Part of our skepticism about the state's commitment to the protection of our rare animals stems from their lack of concern and effort on working to protect even candidate species. To illustrate this point, I will describe our experience with two candidate species:

1. Lynx. Lynx are a category 2 candidate species that the U.S. Fish & Wildlife Service has agreed to do a status review of by November 15, 1994. Since the Montana Dept. of Fish Wildlife & Parks established a quota system for lynx harvest, trappers have not been able to come even close to harvesting the recommended quota - because it is too high (see Table 1 below). Trappers came the closest to the quota in 1984-85, when the quota was set at 135 and trappers were successful at harvesting 69, or 51.1% of the quota.

As an indication of how much our population has seemingly crashed, the MDFWP adjusted the statewide quota to 10 (EMPHASES: 10 lynx for the entire state) for the 1991-92 season: only 3 were harvested that year, or 30.0% of the quota. Only during the 1993-94 season has the quota been exceeded: when they set a quota of 2, and 4 animals were actually harvested.

What is disturbing to us about the MDFWP and their management of this candidate species is that 1) a lot of people, both citizens and scientists, are concerned about lynx populations, 2) the MDFWP has no scientifically based population information or estimate of suitable habitat for this animal, and 3) they continue to recommend harvesting this rare animal.

I want to be clear that the Montana Audubon Council has never been anti-trapping. We do not oppose this activity if it is managed properly. We do not feel, however, that the lynx harvest has been managed properly - and currently the MDFWP is looking at increasing the lynx quota to allow 7 animals to be harvested. The agency still has no scientifically creditable information to back up this increased harvest level. This basic disregard makes us question their interest and commitment at managing rare - let alone endangered - species. Since science is not playing a role in the management of the lynx, we can only conclude that politics is driving the MDFWP's actions.

Table 1. Lynx Harvest in Montana, 1984 - 1994

Year	Total Lynx Harvested Per Year	Annual MDFWP Quota	Percent of Quota Harvested
1984-85	69	135	51.1%
1985-86	35	135	25.9%
1986-87	20	120	16.7%
1987-88	15	120	12.5%
1988-89	22	100	22.0%
1989-90	15	55	27.3%
1990-91	2	40	5.0%
1991-92	3	10	30.0%
1992-93	2	2	100.0%
1993-94	4	2	200.0%

2. Trumpeter Swans. Trumpeter Swans are also a category 2 candidate species. The Montana Dept. of Fish Wildlife & Parks (MDFWP) has no management program for this species. Although there is not a Montana hunting season on Trumpeter Swans, there is a season on the almost identical Tundra Swans. A potential problem arises, particularly on the Rocky Mountain Front, where both birds can be found during hunting season. Non-agency biologists working on trumpeters have requested that the MDFWP educate sportsmen that are hunting Tundra Swans, so that they know 1) that both birds can be found in the area, and 2) that they need to be careful to identify the birds they are shooting to avoid shooting the rare trumpeter. We also have verbally made a similar request to the MDFWP Director.

An educational program for hunters seems to us to be a reasonable, inexpensive, and cost-effective request to protect a candidate species. To date the MDFWP has not instituted such an educational program. The fact that nothing has been done makes us question how seriously the MDFWP is willing to be involved in recovering rare animals.

And finally, the ESA obviously covers more than animals. The State of Montana has no statutory authority to do anything for threatened or endangered plants. The only work done in the state on plants is inventory work done by the Montana Natural Heritage Program located in the State Library.

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Again, the Montana Audubon Council really doesn't care who is doing the work - just as long as it gets done. Our bottom line is that whatever changes are made in the Act to accomplish a stronger state role, the ultimate goal of the ESA must be to do the best thing for the species. Our experience with the State of Montana indicates that they do not always have the best interest of a rare species in mind.

The Endangered Species Act (ESA) is based on a very important premise: that no generation has the right to destroy the environment and our natural resources that our children and future generations depend upon. We need to protect this critical law as an investment in our future - and that of future generations.

Thank you again for allowing us to testify. I would be happy to answer any questions about our testimony.





## MONTANA LOGGING ASSOCIATION

P.O. Box 1716  
Kalispell, Montana 59903-1716  
406-752-3168  
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### ENDANGERED SPECIES ACT REAUTHORIZATION

Testimony of Keith L. Olson  
MLA executive director  
before the Senate Committee on Environment and Public Works  
in Ronan, Montana  
on Saturday, July 23, 1994

#### Senator Baucus:

The members of the Montana Logging Association appreciate this opportunity to speak to the issue of reauthorizing this nations Endangered Species Act...perhaps the most significant natural resource debate of this decade.

Today, the MLA's membership totals 642 independent logging contractors, all of which operate family-owned businesses engaged in the harvesting and transportation of logs forest-to-mill and, as such, are dependent upon a reliable and sustainable supply of timber to provide for the needs of their families.

Within the context of "reauthorization" it is important for Congress to understand that nearly two-thirds of Montana's forest is under federal control and, therefore, that federal mandates such as the ESA must be careful not to disrupt the role which public forests play within the social and economic framework of our rural, resource-dependent communities.

To be clear, the MLA agrees that we, as a society, must endeavor to avoid the extinction of endangered species. In that process, however, we must also endeavor to ensure that the ESA is result oriented...rather than just serve as another tool by which to frustrate management proposals for federal lands. With all due respect Senator, the ESA is the primary weapon used by those who are committed to end timber harvesting in Montana's federal forests...and we submit that such tactics, though successfully halting timber sales, have not proved to benefit endangered species.

All the while, the ESA's few successes and the growing list of candidate species serves to emphasize the hopelessness of attempting to recover single species in site-specific habitats. A better solution would be to incorporate the principles of forest stewardship within the concept of ecosystem management. Rather than exclude human activity from the forest, promote human activity in the forest. Such concepts require faith in the tenet that maintenance of a healthy forest will benefit the vast majority of resource values the forest provides.

Some will scoff at such an idea...but the fact that 20 years of ESA law has resulted in some 1250 listings, but only 4 recoveries, suggests that the current emphasis on excluding humans from sensitive ecosystems is not the answer. We submit that managed ecosystems which embrace the principles of forest stewardship are our only hope. That is not to suggest that we must build condominiums within species-rich ecosystems...but it is to suggest that social and economic benefits must be derived from such ecosystems in order to gain broad support for conservation plans. In other words, human involvement is critical...because only through **MAN**agement can we provide for the responsible and sustainable conversion of forest resources into the economic benefits necessary to perpetuate the forest, its resources and local communities.

In order to develop and facilitate stewardship within the ecosystem, state agencies must become the leading authority. Local communities must have confidence that scientific review and recovery strategies seek to perpetuate endangered species and not simply disrupt the local economy. So, too, the cooperation of private land owners can best be acquired through state leadership and community involvement...however, while we unequivocally agree with those who want the ESA amended to clarify constitutionally protected private property rights, we are equally committed to resisting the notion that national forests and, thereby, resource-dependent local communities, should be condemned to the economic consequences of the ESA as it is currently written.

The continued specter of the federal regulatory hammer being wielded from a centralized and distant bureaucracy will only serve to confirm the suspicions of those who believe that Congress and the Administration are waging a "war on the west." Regardless of the size of the public subdivision, those who reside within the subdivision are the best qualified to devise and incorporate responsible change.

To say that Montanans are leery of federal control is an understatement. Nonetheless, wildlife is a rich part of Montana's heritage...and the vast majority of Montanans support protections for endangered species. The ESA may be the appropriate vehicle to guide conservation of biological diversity, and S. 921, which you have co-authored, may be a step in the right direction...however, without significant revisions which incorporate real science, common sense, democratic principles and economic sustainability the ESA will continue to frustrate congressional intent, public expectations and the recovery of endangered species.

Montana's logging community is comprised of honest, hard working folks who have their feet planted squarely on the ground. Though frequently admonished as enemies of the forest... they are only guilty of endeavoring to meet the consumptive demands of a pampered society. While others speculate that timber harvesting is evil, loggers understand that responsible forest stewardship is the key to healthy ecosystems. As an association we are committed to forest stewardship and we are aggressively working on the principles which shape it.

In conclusion, the MLA respectfully suggests that Congress simply must stop writing environmental legislation so as to pit humans against their environment...and we respectfully suggest that is precisely what the ESA, as written, does. ESA amendments which promote human activity, foster stewardship within ecosystems, and advocate state authority will move this nation towards a conservation strategy that benefits endangered species as well as society.

Senator Baucus, please extend our appreciation to the members and staff of the Senate Environment and Public Works Committee for their attention to the very important matter of responsibly amending this nation's Endangered Species Act.

TESTIMONY OF THE MONTANA MINING ASSOCIATION  
 BEFORE THE SENATE COMMITTEE ON ENERGY AND PUBLIC WORKS  
 RONAN, MONTANA  
 JULY 23, 1994  
 RE: REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

Mr. Chairman, members of the committee:

For the record, my name is Gary Langley. I am executive director of the Montana Mining Association.

The Montana Mining Association is a trade association that represents:

1. Every major producer of hardrock minerals in Montana. These are companies that support more than 3,000 families.
2. Businesses that supply goods and services to the mining industry that support another 3,000 families.
3. Companies currently exploring for minerals in Montana or that are undergoing the permitting process.
4. Individual prospectors and miners.

First, I want to emphasize that the mining industry supports the concept of the Endangered Species Act as it was framed more than 20 years ago. But the Endangered Species Act now has become known as the "Pit Bull" of environmental laws. That's because it is being used for political purposes to stop economic and recreational human activity rather than to legitimately recover threatened and endangered plants and creatures.

The Endangered Species Act is flawed and it must be changed or it will destroy the lives of thousands of western families, result in costly litigation and lead to further political warfare over the use of western lands.

Since the Endangered Species Act was passed, 558 species have been listed as endangered and 728 species have been listed as threatened. Yet only 325 recovery plans have been completed and a mere 16 species have been delisted. Four of the delisted species have been found to be extinct and thriving populations of five others were found elsewhere. Indeed, only two of the delistings can be characterized as successful due to conservation programs. The gray whale was delisted, but the action was severely criticized by political environmental groups. And the alligator was delisted only after the animal's population had grown to such proportions that it became a severe nuisance. All of this has occurred at a cost of \$4.6 billion.

Obviously, the Endangered Species Act is not working with the goal of recovery and delisting.

Andy Stahl of the Sierra Club once said: "I've often thanked goodness the spotted owl evolved in the Northwest, for if it hadn't, we'd have to genetically engineer it...we can use it to protect a lot of old growth."

It appears quite evident from that quote, that the real issue is control of land use in the West and that the Endangered Species Act is being used as the driving force.

The potential for further listings is astounding. The Council on Environmental Quality recently noted that the Natural Resource Heritage data base reported that as many as 9,000 domestic species are at risk.

The Endangered Species Act now has become one of the most effective weapons in the arsenal of the political environmentalists.

Proposed listings now include species with large populations scattered over wide multi-state areas. This has the potential of disrupting the economies of entire regions. The desert tortoise, for example, takes in three states while the northern spotted owl comprises six states. The northern goshawk has the potential of impacting human activity in 10 to 14 states.

But people, not those plants and critters truly deserving of protection, will suffer the consequences. The people will lose their jobs. And those lucky enough to have jobs will pay more for realizing the American dream of a house, a car, a back yard with a barbecue and the hope of sending their children to college. The cost of materials used in everyday life will skyrocket as the U.S. becomes more and more dependent on foreign sources for its minerals and other raw materials.

Listings have increasingly targeted specific industries. While the greatest success in these campaigns has been the dismantling of the timber industry, mining appears to be the next target. In 1992, four of seven plant species in Oregon, Idaho and Nevada were alleged to be endangered by heap leach mining. (The proposed listing was later dropped). Also in 1992, the Federal Register contained proposed listings for various birds, plants and mussels that, if made final, would have threatened coal, sand, gold and other mining operations in California, Nevada and North and South Carolina.

Will mining in Montana be next?

The Endangered Species Act has contributed to the political uncertainty that has brought mineral exploration in Montana to a virtual standstill. A few years ago, about \$36 million a year was being spent on exploration projects in Montana. Today, less than a million is being spent. A good part of the reason is because of the unstable political climate that is being generated by the Endangered Species Act, proposed repeal of the General Mining Law and the constant demand for additional wilderness in Montana.

Thus, the second generation of mining--exploration--has virtually become extinct because mineral exploration and eventual development will occur only to the extent that lands are kept open for exploration. If this trend continues, the life expectancy of the mining industry in Montana will be limited to only part of the reserves that currently are being mined.

The Endangered Species Act also is inconsistent in its application.

Why, for example, do we attempt to exterminate a species in one area while declaring it as threatened and endangered in another? The squawfish, for example, is killed as a pest in some states and protected against water projects in others.

Cyrus Noe, a writer and publisher for *Clearing Up*, a power and fish magazine, recently wrote: "There are many species that man is attempting to exterminate because we do not want to coexist with them. Species upon which man wages war include milfoil weed, zebra mussels, squawfish in the Columbia (but not the Colorado), the white fly now devastating California food crops, mosquitos that

carry various diseases and the flea that harbors the bacterium *Pasteurella pestus* or the plague. Is the plague endangered? I hope so."

When people think of the Endangered Species Act, they have visions of the magnificence of the Grizzly Bear or the Bald Eagle. They do not perceive that the law is being used as a ruse to stop human activity under the guise of protecting such obscure creatures and plants as the pond weed that is found only on private land in Texas or a snail that differs from other snails only because of the size of its sex organ.

If the stakes were not so high in terms of human lives, the Endangered Species Act could be held up to ridicule. At the very least, its purpose has been obscured.

We believe changes should be made in the Endangered Species Act that would return it to its original purpose and concept.

These changes are:

1. Make the recovery plan the focus of all Endangered Species Act decision making and require that it be completed within 18 months of the listing. The recovery plan should give priority to measures with the least socioeconomic impact. The plan also must include an assessment of the biological significance of the species and the likelihood that it actually can be recovered. The alternatives for recovery should describe for each alternative the direct and indirect costs to the public and private sectors, particularly its impacts on private property. The plan also should contain measurable criteria for determining when a species must be delisted.

2. The listing process should be revised. Under the current law, the Endangered Species Act requires the listing of every species which is determined to be threatened or endangered solely on the basis of "scientific" data. But there are no standards for determining what constitutes the best scientific data. Social and economic impacts may not be considered. Thus, determinations many times are made on highly suspect, biased and selective information that might be more appropriate published in People Magazine instead of scientific journals. The Act should be changed to place the responsibility on the Fish and Wildlife Service to collect data based on the best science to support listing decisions instead of relying on the questionable and biased information submitted by advocacy groups. This would insure the scientific integrity of the listing process.

3. Private landowners should be given the same opportunity as other federal agencies to consult with the Fish and Wildlife Service. As the system now stands, private landowners do not have that option. Instead, they must prepare habitat conservation plans at considerable expense. Thus, an unfair and unequal standard has been established between the federal government and private landowners.

4. The definition of the term "take" should be revised. Currently, private property owners are prohibited from "taking" a species. "Take" can mean harming, harassing, pursuing, hunting, shooting, wounding, hurting or capturing a species that has been listed as threatened or endangered. This would include any action that might cause damage to the species physically or



psychologically. Under Section 9 of the Endangered Species Act, a private property owner can be subject to criminal or civil penalties for "taking" or face an injunction forcing him to halt the activity.

I am fortunate enough to live with my family on Hauser Lake north of Helena, Montana. Every November, hundreds of Bald Eagles nest on Hauser Lake. Some of them perch on trees on my property. Am I a criminal because I walk out on my deck to get a better view?

This section of the Endangered Species Act must be clarified.

In summary, the Endangered Species Act was born with good intentions. But, instead of being nurtured into maturity, it has been reared in the political back alleys of the East. For those of us in the West, it now packs the punch of Mike Tyson--with bad intentions.

The Endangered Species Act must be changed so that equilibrium is reached among all living things, including the human species.

Thank you for the opportunity to present our views, and we in Montana's mining community look forward to working with you on this very important issue.

[NOTE: The statements that follow are a representative sampling of the many statements received relative to reauthorizing the Endangered Species Act. All statements have been retained in committee files.]

Idaho Montana Wyoming Oregon Washington Alberta British Columbia

## Alliance for the Wild Rockies

Box 8731 Missoula, Montana 59807 • 406-721-5420

July 22, 1994

Senate Environment and Public Works Committee  
407 Hart Senate Office Building  
Washington, D.C. 20510  
Attn: Bob Irvin



To the Members of the Environment and Public Works Committee:

Please accept these comments on the re-authorization of the Endangered Species Act (ESA) of 1973. The Alliance for the Wild Rockies (AWR) is a non-profit conservation organization formed in 1988 to secure the integrity of the Northern Rockies bioregion. We work for protection of biodiversity and natural ecosystems in the five states of Montana, Idaho, Wyoming, Oregon and Washington, through public education, administrative channels, and legislation. Our membership consists of over 600 small businesses and organizations, and over 5000 individuals throughout the country.

We have organized our comments to address the Act's approach, implementation, and enforcement, and have outlined a few areas in which we oppose changes to the Act. We also detail our concerns with S. 921, introduced by Senator Max Baucus.

### I. Concerns About S. 921

A. Section 5. (a)(1)(B) and Section 5. (a)(3)(D). We recommend you strike these sections, which direct the Secretary to minimize adverse social and economic consequences resulting from the implementation recovery plans. They extend far beyond the scope of the Endangered Species Act authored by Congress, and it is beyond the authority and capability of the Interior Department to act in this capacity. There exist no structural mechanisms, staff or financial resources within the Department to carry out this type of responsibility, and these sections would only obfuscate the Act's purpose and intent.

We also recommend that you strike Section 5(a)(5)(B), which exempts recovery teams from the Federal Advisory Committee Act. Full public involvement in the development of recovery plans must proceed in accordance with all applicable laws.

B. Section 5. (a)(2)(B). We recommend you strike this section, which directs the Secretary to give priority to developing and implementing recovery plans for those species whose conservation may be in conflict with development projects or economic activity.



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This section is inconsistent with the original intent of the Act, which is perfectly clear in its direction that scientific factors guide the listing and recovery process. Priorities for listing species, and developing and implementing recovery plans should be based on the risk of extinction to each species, with particular attention paid to their importance as indicators of ecosystem health.

**C. Section 8. (6)(B).** We are concerned about this section, which allows the Secretary to consolidate requests for consultation from various agencies. Given that consultations have been heavily biased against jeopardy opinions, despite unequivocal evidence of severe cumulative habitat degradation, we are concerned that this mechanism will simply be used to expedite approval of proposed developments. Before granting this authority, we urge you to re-examine the consultation process as suggested above.

**D. Section 9. Incentives For Conservation Of Candidate and Other Species On State and Private Lands.** We recommend that you strike this section, as it will pre-empt species listings and weaken efforts to protect sensitive species. Proposed Section 13(a)(1) allows non-federal parties to generate and submit their own plans for species recovery. We are patently opposed to allowing private industries to prepare their own plans for candidate species recovery. There is no scenario under which this could improve protection for such species.

Section 13(a)(2) allows takings permits to be issued under the aforementioned plans. We are adamantly opposed to this section; there is no way this could help protect candidate species. This section appears designed to undermine the Endangered Species Act and the federal government's authority to implement it.

**E. Section 10. Federal Assistance To Help Private Landowners Conserve Species.** We recommend that you strike this section, as it is inconsistent with the primary goals of the Act and sets bad precedent. Spending \$25 million per year to buy compliance with federal law sets a terrible precedent. This section would also open the door to abuse by private landowners. To address the problem of compliance, we suggest public education and stiffer penalties for violations.

## II. Shift To An Ecosystem Approach

The current approach to implementing the Act, based on protecting individual species, has failed to slow the extinction rate among native species in the Northern Rockies and throughout the country. The decline of native species is alarming, and the backlog of species awaiting protection continues to grow. In order to address this problem, we favor shifting the focus of the ESA from protecting individual species to protecting the ecosystems upon which they depend.

An ecosystem approach will more efficiently and effectively conserve biological diversity than does a single species approach. It would also save precious funding by focusing limited resources on indicator species or ecosystem-wide recovery plans, with benefits extending to other species. We support specific language to allow for the preparation of ecosystem recovery plans focusing on indicator species with extensive habitat requirements. This is the only way we can hope to secure protection for the hundreds of species awaiting listing and recovery actions.

As part of this approach, we must demand a better accounting for the cumulative effects of habitat fragmentation. The landscape or ecosystem level is the appropriate level to analyze and address these cumulative effects.

### III. ESA Implementation Must Be Strengthened

It is our view that the main problem with the ESA is the failure of federal agencies to implement it in a manner consistent with the intent of the original Act. Some of this is certainly due to bureaucratic inefficiency, and insufficient funding for administration of the Act. However, we have witnessed a systematic and deliberate refusal to implement the Act on the part of agency officials within the U.S. Fish and Wildlife Service (FWS), Bureau of Land Management, and the U.S. Forest Service. This serious problem must be addressed.

A. Critical Habitat Designation - The failure to designate critical habitat, with measurable standards, for grizzly bears and other species is one example of this implementation problem. Political pressure from development interests in Congress and the private sector is hindering the Act's implementation.

B. Consultation - Another example is the failure of the consultation process to stem the tide of habitat degradation throughout the Northern Rockies. In contradiction to the spirit of the Act, the FWS examines specific projects in a vacuum and consistently issues "no-jeopardy" opinions on projects, despite obvious cumulative effects which have accrued and continue to accrue. This approach is merely waiting for the "straw that breaks the camel's back." Rather, the law calls for agencies to make a proactive effort to avoid species extinctions. Again, political pressure is responsible for this implementation failure. We urge you to reaffirm the importance of solid, unbiased scientific information in this process.

C. Recovery Plans - The backlog of overdue and outdated recovery plans continues to grow. Nearly one-half of all listed species do not have recovery plans. We support adopting a timeliness deadline for the development of recovery plans, and reaffirming the obligation of agencies to actively implement recovery plans.

In addition, we feel that stronger scientific criteria must be established for what constitutes species recovery, and that recovery plans should list federal actions which are inconsistent with recovery.

D. Candidate Species - Because so many species are currently awaiting listing and protection under the Act, we feel it is essential to place an affirmative duty on federal agencies to conserve candidate species in the consultation process, and also by protecting them against takings.

### IV. ESA Enforcement Provisions Must Be Strengthened

Because the Act's weaknesses are based on the undue influence of political pressures, we support measures to make responsible parties accountable. We urge you to adopt stiff criminal penalties for agency officials and Members of Congress who thwart

implementation of the Act. In addition, we think that the Secretaries of Interior and Commerce should be empowered to seek damages for destruction of listed species and their habitats.

We also believe the Act's definition of "harm" should include degradation of listed species' habitats which disrupt species. Maintaining habitat quality is absolutely essential to listed species' recovery, and degrading their habitat is every bit as "harmful" as direct harassment. This needs to be restated and emphasized in the statute.

The Act's citizen enforcement provisions must be protected, and we support eliminating the 60-day notice requirement for species threatened by an immediate risk from development.

#### V. Do Not Expand States' Authority

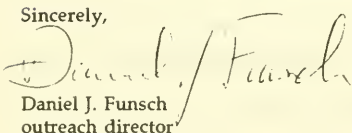
The States already have responsibility for managing wildlife populations; by the time a listing under the Act is proposed, State wildlife managers have by definition failed to protect that species. Giving States more authority under the Act will not address the problem of extinctions. State agencies are susceptible to intense political pressures and they do not have sufficient funding to carry out the duties required by the Act.

#### VI. Do Not Give Added Weight To Economic Factors In the Listing Or Recovery Process

The ESA clearly mandates that science shall guide listing and recovery actions for imperiled species. Emphasizing economic factors in the recovery process or introducing cost/benefit analyses into listing decisions will further politicize a process already unduly affected by politics and socioeconomic concerns. We strongly oppose this. It may be appropriate to mitigate anticipated socioeconomic impacts due to listing and recovery actions, however, these concerns should not affect decisions to list species and the development of scientifically based recovery plans.

We thank you for this opportunity to comment. Please keep us advised as your Committee takes up debate on this important legislation.

Sincerely,



Daniel J. Funsch  
outreach director



Statement of Larry Craft  
Representing the Aluminum Workers Trades Union Council  
Columbia Falls, Montana

Delivered to the Senate Committee on Environment and Public Works  
July 23, 1994  
Ronan, Montana

Senator Baucus and members of the Senate Committee on Environment and Public Works, we thank you for the opportunity to present our concerns on the impact of the Endangered Species Act on our membership. Our union members live and work in Montana for the very reason the ESA exists--we enjoy the fish and wildlife available in the Northwest. Because of this fact, in general, we support the Act's intention of preserving fish and wildlife species. Unfortunately, actions taken in recent months jeopardize the prospect of continued living and working in this area. Due to controversial and unsupported salmon management efforts, specifically increased flows in the Columbia River system, the power reserves in the Northwest were reduced and a situation developed that forced the Bonneville Power Administration to curtail 25 percent of the power supplied to the aluminum plants in the Northwest. This curtailment substantially contributed to the loss of 107 jobs within our membership. In that act alone, we have paid dearly to protect salmon in the Columbia River system and we continue to pay as our company struggles to deal with higher power costs resulting from continuing conservation efforts.

The effort in which you, Senator Baucus, were successful in getting the administration to pick up the expense for the emergency spill program this spring was greatly appreciated. As aluminum workers and Northwest rate payers, this was a great relief. However, as taxpayers we are concerned about the dollars wasted on poorly planned and inadequately researched efforts to save all salmon species in the Columbia River system. In the fight to save salmon in the Northwest, we need to remember that we are working with limited resources and we need to utilize those resources where the greatest benefits can be achieved.

We urge you to work toward increased consideration of social and economic impacts in the reauthorization of the ESA. We understand that all things come at a price--we have made a considerable payment. Please don't force the rest of our membership to forfeit their jobs. It will be extremely difficult to contribute to the salmon recovery process if we are unemployed.

Thank You.  
Larry Croft

The Honorable Max Baucus, Chairman  
 Committee on Environment and Public Works  
 United State Senate  
 Washington, D.C. 20500

July 12, 1994

Dear Senator Baucus:

RE: Reauthorization of the  
 Endangered Species Act

I am told your committee will hold public hearings and receive testimony for legislation which will re-authorize the highly controversial Endangered Species Act. While one individual such as myself will carry little influence compared to the strong environmental special interest groups, I felt it my obligation to at least make an attempt and communicate my strong opposition to this bad legislation.

My opinion suggests that the original intent of the Endangered Species Act has been grossly overlooked and terribly misinterpreted resulting in severe violations of the Fifth Amendment Rights by virtually all governmental branches (Federal, State, County, and Cities). This ESA has cost billions of dollars in expenditures from both private and governmental sectors eroding badly needed funds for absolutely necessary and or mandated programs. The net losers here are the taxpayers.

Unnecessary and unreasonable restrictions have directly resulted in the taking of private property without compensation, have caused billions of dollars in damage as the result of fires, flooding, crop and business destruction, has caused untold numbers of jobs to be lost, resulting in less revenue to local, state and federal sources. How can any legislation which results in such horrific economic harm, which propels such harsh social damage, which gives "endangered species" a higher priority by law than the people who live in this nation be considered even warranted? The ESA should be immediately trashed, shelved, and never reconsidered in its present form.

The Endangered Species Act fails to balance costs and benefits under any reasonable or meaningful basis. The challenge as I see it will be to find practical ways of finding legitimate conservation goals without harming the economy or destroying shrinking tax resources. To pretend lawmakers are attempting to save everything is intellectually dishonest and coated with special interest distortion and fraud. The result becomes bad legislation coupled with runaway bureaucratic overkill. We little business people cannot afford to litigate the Federal Mandated ESA laws which cripple business, jobs, safety, and property, all at the taxpayer's expense. Double jeopardy under the law, or a double expense where no one other than maybe the "endangered species" prevail. Complete, and very expensive injustice disguised under an umbrella of conservation.

A large corrective action is required to remedy this bad law which will not occur by amendment or piece meal solutions. This legislation is bad and totally in need of

overhaul. As chairman of this committee, I urge you to act in the interest of the whole, not the special interest groups who want others to pay for what they cannot afford. The safety of the population at large must prevail over rats, birds, lizards, cockroaches, weeds, brush, flies, crickets. What happened to logic, reason and equality under the law?

My business was totally destroyed by local flooding as was the entire old town of Temecula by virtue of watershed/wetlands restrictions imposed by the EPA. US Fish and Wildlife Service appointed State Fish and Game to enforce EPA rules. Result, over last ten years, 18 feet of sedimentation accumulated in Temecula Creek causing water to flood City. Local County Flood Control Officials have been prevented by law from cleaning out streambeds in order to attain known water run off from tropical storms from Pacific Ocean. Four (4) feet of water entered my office and over two and one half feet inundated the entire town causing millions of dollars in damage. Still, County Flood Control cannot correct the real problem because of the ESA. This is absolutely absurd and demands immediate correction.

I would appreciate hearing from you on this matter.

Sincerely,



Jack Buck  
28455 Front Street  
Temecula, California 92590

8986 Buffalo Bridge Road  
Polson MT 59860  
July 20, 1994

Senate Environment Committee  
407 Hart Senate Office Building  
Washington DC 20510

Gentlemen

Please consider these views on Endangered Species Act.

About grizzlies: (We spend our vacations camping in the wilderness and also hunt there and on other public land.) Some hunting of grizzlies is needed to make them more afraid of humans and to eliminate those which have less fear of humans.

About wolves: They are beautiful. I once thrilled at observing a wild one at close range. But please do not turn them loose in cattle country. Our business is caring for our cattle, just as you protect your family or your dog. Standing by complacently while wolves tear up our cattle just isn't acceptable, even if the government pays for the cattle. American taxpayers have more urgent priorities. Please protect both our cattle and the taxpayers by opposing wolf introduction.

About relocating problem wild animals: We receive reports of many cases of game officials tranquilizing and releasing in new territory a bear or cougar that has killed livestock or bothered people. Far too many either return to the original site or repeat the original behavior. Consider the cost of relocation as well as the danger to humans. Problem wildlife should be killed or put in zoos.

Thank you very much.

Sincerely yours

*Donna Day*  
Donna Day





## Friends of the Bitterroot

P.O. Box 442

Hamilton, Montana 59840

August 3, 1994

Senator Max Baucus  
511 Hart Building  
Washington, D.C. 20510

Senate Environment and Public Works Committee  
407 Hart Building  
Washington, D. C. 20510

Dear Senator Baucus and Mr. Irvin,

This letter to the both of you is in regard to the reauthorization of the Endangered Species Act.

First let me introduce our organization. We are Friends of the Bitter Root Inc., a 700 member Northern Rockies conservation organization with headquarters in Hamilton, Montana. We are grass roots to the core. Most of our members live in Montana's Bitter Root Valley. Our organization is seven years old.

Senator, we wish to thank you and Senator Chaffee for introducing S. 921. It is a good start. However, it needs some critical amendments if it is to adequately protect wildlife species (flora and fauna) that are or soon will be at risk.

We strongly encourage you to make the following additions to your bill:

1. Provide greater protection for species that are candidates for listing as endangered or threatened by requiring federal agencies to affirmatively conserve such species.

2. Restructure federal programs that currently subsidize the destruction of biological resources. Examples of such wasteful and destructive programs are:

the below cost timber sales programs of the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM).

below cost grazing programs (domestic livestock) on USFS and BLM administered lands

mining programs on the western public lands

3. Require the Fish and Wildlife Service and the National Marine Fisheries Service to consider the cumulative effects of federal and non-federal activities on listed species.

4. Set deadlines for development and implementation of recovery plans. This will help insure recovery of species from the brink.

5. Insert provisions for conserving entire ecosystems on which endangered species depend.

We have some additional comments which we would like you to seriously consider:

1. We believe current efforts to de-list the grizzly are premature. Key grizzly habitat is still being lost to roading, logging and mining. Open road density standards for grizzlies and some other wildlife species are not being met on the national forests in Montana.

2. We vigorously oppose any provisions that would:

Limit Fish and Wildlife consultation on forest plans, revision of forest plans and individual projects.

Invoke the "God Committee" decisions upon receipt of jeopardy opinions and prohibit court-ordered injunctions for ESA violations.

Limit judicial review in any way or in other ways that would weaken the ESA.

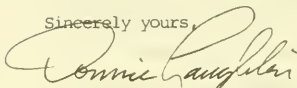
3. We emphatically oppose:

The Shelby-Gorton S1521. It is basically ESA destruction legislation.

The Tauzin-Fields HR 1490. It is similar to the Shelby-Gorton bill both in content and purpose which is to "gut" the ESA.

Thank you for your attention to this matter. Please keep us informed as this critical legislation moves through Congress.

Sincerely yours,



Donald K. Laughlin, President

cc: Pat Williams, Conrad Burns  
Secretary Bruce Babbitt  
Montana Wilderness Association  
Wild Forever

TO USE  
— NOT ABUSE



TO CONSERVE  
— NOT PRESERVE

July 25, 1994

- *A People's Organization* -

The Honorable Max Baucus, Chairman  
Senate Committee on Environment and Public Works  
511 Hart Senate Office Bldg.  
Washington, D.C. 20510

Dear Senator Baucus and Committee Members:

My name is Merle Lloyd, Administrative Officer of Grassroots for Multiple Use, Inc. Our Organization has some 2,300 members who reside in Montana, Idaho, and several other states, who are finding their families in jeopardy due to the Endangered Species Act and how it is being administered.

History of this Planet is recorded in the sediments of the past. To Geologists, the remains of flora and fauna designate the period in time, when they existed. The point I make is no one, Government or Government Agency like the U.S. Fish and Wildlife Service, who believe they are more powerful than God, can stop, delay or control the natural evolutionary process.

The Endangered Species Act has been misused, abused and is a mighty tax drain and an economic depressant.

1. To understand misuse, one has to differentiate between preservationists, who disguise themselves as environmentalists, which they are not. Preservationists use the ESA as a tool to gain their own ends, which is economic depression and people control by any means.

2. Environmentalists look for a better means of using resources for the public need. They, like Resource Providers, seek sustainability and conservation.

3. Wetlands, Clean Water and Environmental Protection and Animal Rights are also preservationists tools to further their agenda. Congress helps by allowing tax-free donations to the preservationists to use in their campaign against the public.

4. Tax drain - hundreds of millions of dollars as tax free donations as mentioned above. Government agencies hiring people with tax supported salaries to do nothing but search for sensitive or endangered plants and animals. Loss of revenue to cities and counties, caused by non-use of renewable natural resources, accompanied by loss of personal property tax as users are forced to quit or take bankruptcy.

5. Economic depressant. The ESA has been used to stop lumber production, case in point, the Spotted Owl, who uses second growth and follows logging because its food source, the vole is exposed. Remember, the snail darter, found in abundance, but look at the increased cost of the dam. Grizzly bear protection, stopping lumber production at the resulting loss of jobs and waste of resource. Large fines to ranchers, protecting personal property while on their own private property. The list could go on and on. But, the preservationist plan works! A nation 5 trillion dollars in debt buying 34% of its wood products needs from Canada, while our own dead and dying forest resources goes to waste.

It is recommended that the ESA be amended.

1. The U.S. Fish and Wildlife Service is violating the States' rights to manage the wildlife and waters within their borders. U. S. Constitution, 10th Amendment. Let the States manage their own.

2. The Fifth Amendment to the Constitution is violated when people cannot farm their land or protect their homes, - Kangaroo Rat in California.

3. Entrance to Private Property by Federal Agencies must be curtailed, unless permission is obtained and any documentation gained, turned to the land owner. U.S. Constitution, 4th Amendment.

4. Decisions on listing under ESA must have scientific data and consider the whole of North America, not specific areas.

5. Decisions on listings must consider social and economic impact.

6. Animal adaptations presently in existence will be destroyed, if all consequences are not considered. Example seals and sea lions, slaughtering salmon at the mouths of spawning streams, not for food but joy of the kill.

7. Private property owners must be able to protect their property without fear of penalty.

I request this be made a part of the record.

Respectfully submitted,

*Merle D. Lloyd*

Merle D. Lloyd  
Administrative Officer  
Grassroots for Multiple Use, Inc.

July 26, 1994

US Senate Committee  
on Environmental and Public Works

Attn: Sen. Max Baucus

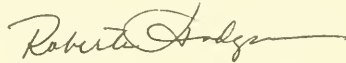
Re: Reauthorization of the Endangered Species Act.  
JUL 29 1994

Please enter this written testimony in official  
testimony.

We do not support any additional restrictions  
placed on private citizens in conjunction with  
the ESA. Private property protection is absolutely  
essential. Some species become extinct as the law  
of nature supercedes our involvment.

Not one job loss is worth one animal, insect or  
tree. We cannot afford to have people out of  
work for such silly reasons. We do need to take  
care of all things, but not at the expense of  
sensible use by people. People are here and we  
deserve more consideration, not less.

Thank you.



Roberta J. Hodges



Theodore W. Hodges

610 St. Andrews Drive  
Columbia Falls MT 59912





# Kauffman Angus Ranch

David and Janice Kauffman

2 ☐

July 15/94

DEAR SENATOR BROWN.

I AM WRITING IN REGARD TO THE ROMAN HEARING ON THE ENDANGERED SPECIES ACT.

I HAVE NEITHER THE TIME NOR SPACE TO FULLY VENT MY FEELINGS ON THE ENDANGERED SPECIES ACT. I AM A LIFETIME LOVER OF BIRD SONGS, PLANTS, AND ANIMALS. I AM APPALLED AT WHAT HAS HAPPENED TO THE MOUNTAIN GOAT, WYOMING AND GREY-WOLF-RE-INTRODUCTION - SOMETHING I TOTALLY OPPOSE. PROTECT NATIVE WOLF POPULATIONS - NO INTERFERE.

I LOOK OUT AT MY IRRIGATED MOUNTAIN VALLEY FIELDS AND FULLY REALIZE THAT THE ENDANGERED SPECIES ACT COULD HAVE WASTE TO MY LIFETIME OF EFFORTS AND HOLDING SUMMER TO THE ENDANGERED SPECIES ACT

I AM BECOMING INCREASINGLY ANGRY OVER THE FEDERALIZATION OF MANY THINGS THAT I HAVE DONE. THE MONTANA DEPT OF FISH-WILDLIFE AND PLANTS IS FULLY CAPABLE OF MANAGING ENDANGERED SPECIES IN THIS STATE & HAS AN ADMIRABLE RECORD OF DOING SO. PEOPLE-JOBS-AND ROMAN ACTIVITY NEED TO BE FACTORED INTO THE ACT.

YOU PERSONALLY HAVE TO KNOW THAT THE STATE OF MONTANA DID A SUPERB JOB OF CARRYING BEAR MANAGEMENT AND PROTECTING NATIVE WOLF POPULATIONS. GIVE THE PEOPLE WHO LIVE WITH THE ENDANGERED SPECIES BACK A ROLE IN THEIR MANAGEMENT. THE KEY WORD IS "CONSERVATION" AND THAT IS MY OPINION & HAS MY SUPPORT.

CHANGE THE ACT - FACTOR IN PEOPLE - STATES - REGIONS - AND COMPROMISE - ECONOMIC IMPACT - CULTURE - AND PROTECTION - BUT NOT DIRECT PROTECTION AT THE EXPENSE OF ALL OTHER VALUES - INTELLIGENT PROTECTION THAT INCLUDES PEOPLE.

END !!

THANK YOU

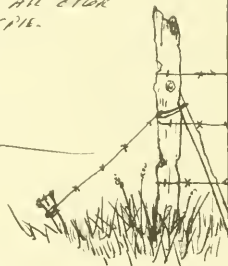
David Kauffman



644-2459

3299 Dublin Gulch Road

St. Ignatius, MT 59865



**Donald H. Kern  
533 Capistrano Drive  
Kalispell, MT 59901**

PLEASE ENTER THE FOLLOWING COMMENTS INTO THE FORMAL RECORD OF HEARINGS RE: THE ENDANGERED SPECIES ACT, BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE:

The world is losing animal, fish and plant species faster than ever before. Many estimates place the rate of extinction at more than 100 species every day. Since 1973, the Endangered Species Act (ESA) has stabilized the status of 238 animals but has fully recovered only six species. Without the ESA, efforts to ban DDT and stop the poaching of the Bald Eagle would likely have failed. While the ESA has enjoyed limited success, it's original purpose is being derailed by logging, road building, dams, water diversions, mining, grazing, poaching and other human activities. The ESA needs to be strengthened to address issues which were not foreseen in 1973 when the Act was created.

Here in Montana, we still enjoy a relatively rich abundance of wildlife. But even here, in one of the last strongholds of many endangered species, we continue to lose ground in the battle to save threatened and endangered species. Two recent examples of failure in protecting threatened and endangered species highlight the importance of the need to preserve, protect and strengthen the ESA.

The Revised Grizzly Bear Recovery Plan is an internal attempt by the U.S. Fish and Wildlife Service to prematurely delist the threatened grizzly bear and lower protection standards for the bear and its habitat. Despite overwhelming criticism of two earlier drafts, which included comments submitted by a number of noted grizzly bear experts and conservation biologists, the plan has not improved, and in many ways it is significantly weaker than earlier versions.

Overall, the plan is fundamentally flawed because it: (1) fails to protect grizzly bear habitat; (2) sets insupportably low recovery targets and establishes recovery zones that are too small to recover grizzly populations; and (3) calls for grizzly management in a number of small, isolated populations, which conservation biologists believe could lead to the extinction of the species in the lower-48 states. The plan allows for the same forces and factors to continue, including concerns around habitat and population status and trends, that led to the listing of the species as threatened in 1975.

A glaring example of the failure of the ESA to adequately protect endangered species is evident in the Cabinet Mountains Wilderness Area near Libby in northwestern Montana. In the heart of the Cabinet/Yaak Recovery Area, the U.S. Forest Service, with the blessing of the U.S. Fish and Wildlife Service (USFWS), has sentenced an already tenuous grizzly bear population to extinction by approving a large-scale mining project which will tunnel underneath a designated wilderness area and disturb large areas of prime grizzly bear habitat which should have been protected for the bear. The approval of the Montanore Mining Project, to be operated by giant Canadian mining conglomerate Noranda Minerals Corporation will sound the death knell for the grizzly bear in the Cabinet Mountains. The USFWS originally issued a jeopardy biological opinion on the grizzly, stating that if the project proceeded, it would cause irreparable harm to the grizzly population and some of the best grizzly habitat in the area. At the insistence of the Forest Service and Noranda, the USFWS reversed its decision in return for "mitigation," a frequently overused procedure which amounts to capitulation. Here, in a situation where the grizzly bear should have been given overwhelming preference over a questionable mining operation located on the border and underneath of the Cabinet Mountains Wilderness Area, the ESA has failed to protect a small but significant population of bears in favor of industrial development.

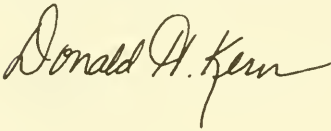
Another prominent example of the failure to the ESA to adequately protect species can be found in the June 7, 1994 USFWS decision to not list the bull trout as endangered or threatened. The bull trout is a native Montana species, historically found from the headwaters of Canada's Yukon River to northern California. The bull trout is now extinct in 95% of its original habitat. Some of the few remaining viable populations can be found in Montana. In it's decision, USFWS spokesman Doug Zimmer said "What we found was that this critter is in trouble and it deserves to be listed, but there are 80 other species in this region that are in more danger." How is it possible that the bull trout can be extinct in 95% of its former range and not warrant listing, yet there are 80 other species in more serious danger of extinction? This simply does not make sense. Obviously the ESA has failed miserably in this situation. Or is it merely the administration of the ESA by the USFWS that has failed to protect our threatened and endangered species?

The Biodiversity Legal Foundation estimates that over 6,000 species and natural communities are threatened IN THE UNITED STATES ALONE! This estimate is made up of species with a global ranking of G-1 (critically imperiled globally because of extreme rarity), through G-3 (very rare), and includes native vertebrate, invertebrate and plant species. Less than 20% of these species are presently receiving adequate protection. Only about 600 native U.S. species are listed and protected under the Federal Endangered Species Act.

The legal classification of a rare or endangered species is often inconsistent with its actual biological status. As the administrative system is presently working, there is a major difference between Threatened and Endangered species in the biological and in the legislative sense. In the legislative sense, only those species that are formally listed are considered Threatened and Endangered and protected by state and federal agencies. There are, however, hundreds, if not thousands of species in the United States that are presently at equal or greater risk biologically that have not been placed on either state or federal endangered species lists. Typically they receive little attention and inadequate protection.

Many of these species will be lost if their status is not updated and they are not formally listed and protected soon. Thousands of native species in the U.S. are in immediate danger of being extirpated as a result of state and federal agency foot dragging. Eventually, local extirpations lead to global extinctions.

Mounting development pressures and shortsighted practices of resource extraction in Montana and elsewhere demand that we take strong, proactive conservation measures. We cannot afford to take for granted the wealth of wildlands and wildlife that make Montana such a special place to live. Extinction is forever. I strongly urge you to strengthen the ESA and force the USFWS to comply with the original intent of the law by protecting our threatened and endangered species.



Donald H. Kern


August 4, 1994

Dear Senator Baucus,

Thank you for taking the time to allow for hearings on the Endangered Species Act. I was not able to attend the public hearing in Ronan however I do wish to comment on the act and its reauthorization. For the record I am sending a copy of this letter to Senator Burns and Congressman Williams.

I will first begin by expressing how dismayed I was to watch the evening news clip of the hearing and to see how this issue has polarized many Montana communities and indeed many communities around the country. It's unfortunate that political rhetoric such as "the war on the West" has been used as well as the statement "owls vs. jobs". These types of statements only add fuel to an already volatile issue. I believe that the Endangered Species Act has set an historical precedent for this country. Basically what it means is that U.S. citizens understand the value of attempting to preserve the diversity of organisms that inhabit the earth. Contrary to what some may think it does not mean that supporters of the Act value plants and other animals more than humans; rather it demonstrates the understanding of our dependence on healthy ecosystems. The argument is often made that the Act gets in the way of the economic well-being of many Montanans. We have to ask ourselves if it's the ESA or is the fact that often we have not managed our ecosystems on a sustainable level with regards to natural resources. I would argue that if during the 80's the forests were managed on a sustainable level for logging we would not have the bust in the wood products industry that is occurring now. I feel that if any changes are made to the ESA it should be that more emphasis be made on sustaining ecosystems rather than targeting individual species. If the ecosystems are healthy then the organisms that inhabit them will have a better chance of surviving. I would emphasize that man be included in the "organisms". If the ecosystems can be managed so as to avoid the "boom and bust" economic cycles that have frequently occurred in the past in Montana then the economy will be more stable as well as the employment situation for our citizens. With well managed ecosystems we will continue to enjoy the rich diversity of plants and wildlife that we have in Montana as well as the quality outdoor experiences that we have come to value. I urge you to take into consideration the need to emphasize sustainable ecosystem management when reviewing the reauthorization of the Endangered Species Act. Thank you for the opportunity to comment on this issue.

Sincerely,

  
John W. Miller

John W. Miller  
703 Highland Park Drive  
Billings, Mt. 59102

Statement of  
 Montana Grain Growers Association  
 Idaho Grain Producers Association  
 Washington Association of Wheat Growers  
 Oregon Wheat Growers League  
 to the U.S. Senate Committee on Environment and Public Works  
 on Amendments to the Endangered Species Act  
 Ronan, Montana      July 23, 1994

Wheat growers in the Pacific Northwest, including the states of Montana, Idaho, Washington and Oregon, have a great deal at stake in government policies to protect endangered species. Most importantly, the Columbia/Snake River system is a vital channel of transportation for getting our wheat to export terminals, with the river carrying 35 percent of all U.S. wheat exports. Recovery plans for salmon and other species which have been listed or may be listed will have a significant impact on the viability of barge traffic on the river. In addition, under the Endangered Species Act, farming activities surrounding critical habitat could be significantly restricted, with serious implications for farming operations in the region.

Proposed amendments to the ESA, including S. 921 and S. 1521, as well as recent administration policy announcements, recognize the need for greater consideration to be given to economic and social impacts of conservation efforts. Endangered species protection efforts should not be undertaken with complete disregard for the welfare of local communities and industries and costs to the American public. It is important that this concept be applied more broadly in the designation of critical habitat as well as in the development of recovery plans for species, and that it be codified in amendments to the law.

S. 1521, which our organizations endorse, provides for the development of alternative recovery strategies that consider biological, social and economic impacts and gives priority to the implementation of recovery measures with the least socioeconomic impact. Under the bill, an assessment of social and economic impacts from listing and potential conservation measures must consider (1) direct and indirect costs to both public and private sectors; (2) effects on employment; and (3) impacts on use and value of non-federal property. Completion of the recovery planning process is required within 18 months of listing. FWS must also respond to public comments when adopting a final plan.

Cost analyses of alternative recovery plans for salmon and their relative effectiveness in increasing the salmon population is the central issue that will determine which recovery efforts can feasibly be made for threatened and endangered salmon in the Columbia/Snake Rivers. Even though \$1.5 billion has already been spent over the last 13 years on recovery efforts in the region, the principle of applying effective least cost alternatives has



been ignored in recent federal agency decisions to implement spill and flow programs that will cost taxpayers \$10-30 million, with no reliable expectation of increased likelihood of recovery. Real costs to river users and real benefits to the species have not been adequately assessed in comparing the costs and benefits of reservoir drawdowns to alternatives like collecting and transporting smolts around the dam systems on the river. Proposed drawdowns would bring barge traffic on the river to a standstill during peak periods of transporting grain from farm to port, and would prevent wheat growers from meeting buyer requirements. Export markets would be lost, and the economic impact on the wheat industry would be severe. Truck and rail alternatives would not be able to compensate for the loss of access to barge facilities, and would be far more costly. Because of these experiences in our region, we feel very strongly that the Congress must act to give clear direction to federal agencies that the least disruptive and least costly recovery strategies must have priority.

It is important that the Act allow for and encourage regional efforts to cooperatively plan for species recovery. Our organizations have participated in the Salmon Summit, and other regional planning processes which seek to merge the various interests in the Columbia/Snake River systems to find a solution to the declining stocks of wild salmon populations. A definitive recovery plan has not yet been adopted because of the difficulty of balancing the goals of the ESA with the economic realities of the region which is home to an endangered species. The goal of the final plan must be a realistic and scientifically credible plan that is acceptable to regional communities and industries. All such interests must be involved in the planning process.

The Salmon Summit provided an opportunity for individuals, businesses and other river users who would be most economically impacted by protection efforts to cooperatively plan for recovery which would minimize disruptions on the river system. Many of the participants had already contributed a great deal to salmon enhancement projects, such as dam improvements, habitat restoration and other passage improvements. And many of these projects formed the foundation for recovery recommendations issued by the Summit. The Summit has been an important demonstration of how balanced consideration of economic disruptions and allocation of recovery costs between public and private resources can be accomplished through more regional control over species recovery planning.

The salmon issue in the Pacific Northwest also points clearly to the need to assess a broad territorial range for a species in determining whether it is actually in danger of extinction. The fact that stocks of specific salmon populations are declining in a given habitat yet are commercially harvested and allowed to be extensively consumed by predators in nearby environments points to the need for comprehensive recovery planning which addresses every stage of the life cycle, as well as better scientific assessments of "subspecies" in accurately appraising the status of a species. S. 1521 includes authority for conservation priority to be given to

a "single species genus", followed by "species", "subspecies" and finally "distinct population segments."

The salmon issue also illustrates the lack of clear guidelines within the law on what the goal of a recovery plan should be. There is a vast difference between rebuilding salmon populations to harvestable levels as opposed to maintaining a stable fish population. And the distinction between these two goals would make an enormous difference to the commercial users of the river system, and to the overall economic vitality of the region. Goals must be established clearly by the Congress and in a manner that balances all public interests. Under S. 1521 recovery planning must provide for objective measurable criteria, including a population level target, for delisting. Requirements for an estimate of time required to achieve the goals and the intermediate steps to such goals are also included in the legislation.

With over 1,300 species and subspecies listed as endangered or threatened, and 3,996 "candidate" endangered species waiting to be listed, it is obvious that greater and greater numbers of farm operators will be directly affected by the ESA. Protections for private property owners, and a program based on incentives to help preserve habitat rather than penalties to enforce unlimited and extreme conservation initiatives, are essential improvements in current law. Existing law does not provide private landowners with incentives to work cooperatively with the government to recover listed species or to protect species before they must be listed. S. 1521 contains several programs to provide landowner incentives, including grants for habitat preservation. We encourage consideration of a habitat conservation program which could be modeled after the Conservation Reserve Program established in the 1985 farm act, providing for rental contracts between landowners and the government.

S. 1521 also provides safeguards for private property owners by clarifying the definition of "take" to focus enforcement on actual injuries to protected species and by authorizing issuance of general incidental take permits for activities with minimal adverse effects. These are important provisions for farmers who are concerned that normal farming activities such as cultivating, planting, and pesticide and nutrient applications will increasingly come into conflict with habitat protection restrictions under ESA. We view with great concern recent indications that FWS is considering designating 20.5 million privately owned acres in central Texas as critical habitat for one endangered bird - the golden-cheeked warbler. An action of such proportions would be an alarming indication of the extent to which activities on private land will be controlled by the government if the Congress does not act now to restore balance to the Endangered Species Act.



501 N. Sanders, Suite #4 • Helena, Montana 59601 • (406) 442-9666

Montana Hearing on the Endangered Species Act  
 Ronan, Montana  
 Saturday, July 23, 1994

Testimony of the  
**MONTANA WATER RESOURCES ASSOCIATION**

The Montana Water Resources Association (MWRA) extends appreciation to Senator Baucus for his effort to obtain comments from the people of Montana as pertains to reauthorization and impacts of the Endangered Species Act (ESA). Montanan's and citizens of other western states live with the social and economic impacts of the ESA. It is certainly appropriate that we have an opportunity to express our concerns and opinions.

While species and environmental protection are important, social and economic impacts of related actions must be considered. Primary concern must be given to the wellbeing of people and the protection of rights provided under the Constitution.

Paramount among the concerns of the MWRA are protection of private property rights including, but not limited to water rights and the state's right to absolute and unimpaired control regarding the use and adjudication of water resources. In addition, no ESA legislation or programmatic action should be predicated upon any thing less than a solid scientific base and a realistic assessment of the true social and economic impacts, including impacts on man.

In addition to the primary concerns of the Montana Water Resources Association as noted above, the Association is in concurrence with the intent of resolution adopted by the National Water Resources Association. The MWRA urges Congress to consider and include the following as pertains to ESA reauthorization and implementation:

- Implementation subject to the National Environmental Protection Act and consistent with other federal laws, authorities and purposes and in a manner that will minimize social and economic impacts;
- Inform and provide for full public participation as pertains to proposed ESA actions and an accounting of the benefits and costs associated with implementation of ESA actions;
- Provisions to ensure that interstate compacts and decrees of the U.S. Supreme Court are not in any way adversely impacted;
- In addition to the rights of other water users, provide for the unimpaired use and protection under state law for water storage and water rights provided for under contract to Reclamation Projects and the producers receiving such water;
- Compliance not be required for continuation of existing and

"Montana's Voice for Montana's Water"

July 23, 1994  
 ESA Hearing, Comments  
 Page 2

- historic water depletion;
- Authority of a federal agency to acquire land or water under the Act shall be limited to a voluntary basis and shall be in full compliance with the laws of the state;
- Just compensation be provided to those injured by the taking of any private property rights or private property;
- Provide exemptions for operation and maintenance and emergency repair of existing water facilities;
- Promote and accept cooperative conservation or recovery efforts by local and state governments and private interests in lieu of listing species as threatened or endangered;
- Delineate that recovery plan development and recovery is clearly a federal obligation;
- Support maintaining endangered species through artificial propagation;
- When a species is listed, require identification of proposed recovery action costs, recovery probability, section seven consultations, reasonable and prudent alternatives needed to avoid jeopardy, and economic impacts;
- Determine that only subspecies of significant genetic difference from the primary species will be protected;
- Require that all critical habitat designations contain thorough analysis of all economic impacts and exclude an area from designation if costs exceed benefits, unless failure to designate would render the species extinct and regularly review such designations to determine need for continuance;
- Require appropriate federal agency to review prior actions and include public hearings in the affected areas of each state when requested by state legislature or governor; and
- Require that quantifiable goals, including an identified recovery date be set for the recovery of a given species;

The unnecessary adverse social and economic impacts of the Endangered Species Act have been far too deeply felt by hard working Montana's who have been misplaced from a job or a business, lost many of their private property rights, lost reasonable access to public resources through increased road and other closures, or prosecuted and fined through criminal proceedings that place more value on the preservation of an animal than on human welfare. Therefore, it is appropriate and right that the Endangered Species Act be amended to require accountability for the true economic and social costs to society. A reasonable and responsible balance between the needs of man and the environment can be achieved, but only if decisions are based on fact and not subrogated to emotionalism and special agendas.

Again, the MWRA thanks Senator Baucus for providing an opportunity for Montanan's to voice their concerns regarding the Endangered Species Act.

7-20-94

To: Senator Max Baucus &  
Senate Environment and Public Works Committee

From: Nyah Grange, Hot Springs, Montana

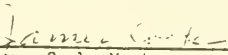
Subject: Endangered Species Act

We are very concerned that the present Endangered Species Act does not give due consideration to the economics of the actions carried out under the act; nor does it give due consideration or respect for private property rights. Some examples are:

1. Should we spill water over dams to possibly protect a salmon sub-species? What is the cost of lost electrical generation? How will electrical rates in the area be affected? How will this affect our local fisheries?
2. We were shocked when we read a recent article in the July 1994 Montana Farmer. According to this article Interior Secretary Pruce Babbit recently approved a Yellowstone Park Wolf reintroduction plan. This plan listed Montana boundaries as everything south of the Missouri River and from North Dakota to Interstate 15 at Great Falls. Is this True? Is this a "small portion" of Montana? How will private property rights be affected in the area?

We feel that the Endangered Species Act should not be reauthorized unless there is due consideration for cost-benefit analysis, and full consideration for private property rights.

Sincerely,  
Nyah Grange

  
James Cook, Master

  
Ray Jorgenson, Overseer



July 20, 1994

Okanogan County Citizens Coalition  
John P. Andrisc, Chairman  
Post Office Box 273  
Omak, WA 98841

Senator Max Baucus  
511 Hart Building  
Washington DC 20510

Dear Mr. Baucus:

This is an important time for consideration of the impacts of the Endangered Species Act.

The Okanogan County Citizens Coalition's permanent position on the current law is that the Act **must** be altered to correct several deficiencies:

First, the ESA should consider human and economic impacts of proposed recovery plans. These impacts should be a factor in developing the recovery plan with specific values established for cost vs benefit outcomes.

The ESA should put little of no emphasis on subspecies listing. The membership of OC3 feels strongly that subspecies listing has been used too often with crippling economic impacts.

Species listing should consider populations across that species entire habitat range, not every individual population. OC3 feels that present procedure results in disjointed and fragmented management strategies that are far too oriented to single species.

The ESA listing decision and recovery plans must be subject to independent scientific review by scientists acceptable to both environmental and resource interests. This review must be considered in ESA decision making.

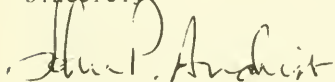
The Recovery Plans **must** provide measurable objectives for population recovery. These objectives must trigger de-listing in the recovery plan.

The Recovery Plan must provide local government involvement to the Counties involved and also the private sector. OC3 feels that the people who live in or near affected areas are very knowledgeable in understanding conditions which affect species survival. It would be wise to include them in any serious effort to protect habitat.

These criteria lead OC3 to support HR 1490 and S 1521 as they are now written. Our membership strongly urges your consideration of the measures. OC3 membership numbers 2200 plus Okanogan County Citizens who are very unhappy about the shortcomings of the current ESA.

We ask you to respond in writing with information regarding your thoughts on the ESA and how you will address these concerns. We ask that you please respond within 2 weeks so that we may continue to study the ESA situation. Thank you.

Sincerely,



John P. Andrist

Chairman

Okanogan County Citizens Coalition

Approved by members:

Agricultural Communities Alliance

Common Sense Resource League

Methow Valley Resource Alliance

Okanogan County Cattlemen

Okanogan County Farm Bureau

Okanogan Mining Association

Okanogan Resource Council

Okanogan Valley Back Country Horseman

United We Stand America

JPA/ba

Date: August 1, 1994

To: Senator Max Baucus, Chair *EPW Committee*

From: Vicki Watson, Associate Professor, Biology, U. Montana

RE: Testimony to be entered into the hearing record on the re-authorization of the ESA

*Vicki Watson*

I want to thank you for your efforts to protect and strengthen the Endangered Species Act. I know it is important that the act not appear to harm humans while protecting other species. I feel the act has always put humans first while endeavoring to prevent the loss of other species. Humans depend on all other forms of life in some way, hence protecting other life is protecting human life. But many people misunderstand the act or claim that it is harmful to humans when it simply is hard on their pocket books. Sharing the earth with other species does require that we give up the idea that the entire earth should be converted to human use. Ecologists estimate that humans already use 40% of the earth's terrestrial productivity. If the human population continues growing in size and demands as it has been, it will consume 80% of the earth's terrestrial productivity in about 35 years. How many species would be lost if we did not choose to limit ourselves and try to reduce that horrifying 80%? And that means fewer development projects than developers would like. Not all development projects or current resource extraction schemes can proceed with only minor changes. Some will require major changes that make them less feasible; some may not be possible at all. But if humans could take all they wanted from the earth with only minor technical fixes of problems, we would not need the Act. Because human demands on the earth are already driving species to extinction, we must all be willing to live more simply and efficiently (especially those of us in the industrialized world). And we must stop human population growth. ESA controversies are among the many things telling us we need to do this.

Still the Act can be improved, and I think many of the changes proposed in S921 have merit. I would like to discuss 4 problems with ESA and possible approaches to these problems.

Problem 1) FWS cannot keep up with the many species that need to be listed and managed for recovery. Since FWS gives priority to the most 'at risk' species, some species do not gain protection until they are in such trouble that extreme measures are needed to protect them. Sometimes it is questionable whether any efforts will save them. Species need to receive protection in a more timely fashion when they can still be saved and when there are more options for accomplishing recovery.

FWS and NMFS need more financial resources to accomplish listings and recovery plans. The National Biological Survey could assist with or take the lead in listing species and/or developing recovery plans while FWS takes the lead in carrying out the plans.

Multispecies listings and recovery plans might speed the process but also have potential for slowing it down. If each species in a multispecies listing must undergo as much scrutiny as each spe-

As did in the single species listing process, there will be no saving in time. And if all the species in a multispecies listing must receive this scrutiny before any of them are listed, then most species will wait longer before being protected. Rather than scrutinizing each species, an entire community might be judged as rare and most of its species assumed to need protection (unless known to use other more common habitats). This would speed the process. However, it is not clear how we will define communities and hence judge them as rare. Developers are often irate when they hear that an animal standing in the way of a development is a subspecies. Imagine how irate they will be when they are told to stop or modify a project to protect a particular kind of sedge meadow that is rare even though there are lots of other kinds of sedge meadow that are not rare. There will be more arguments between community lumpers and splitters than there are between species lumpers and splitters since a community is a more vague concept than a species is.

I recommend that we use a combination of population and community ecology to protect species. Continue to identify species that are at risk and need protection. Instead of just protecting their habitat, identify the communities they depend on, and protect whole communities (especially those where several species appear to be at risk). Assume that all members of the community are important to the species at risk and protect all community members within these protected communities. (Species found in the protected community that do not appear to be at risk need not be protected outside the protected community). In addition, identify and protect rare communities. This will require protecting areas large enough to ensure viable populations of all the species in the community. So I would add the community approach to the population approach rather than replacing the population approach because we have less experience with the community approach, and it will have its own shortcomings. This should speed the process and minimize the chance of ignoring rare species that do not exist in rare communities.

Problem 2) Decision makers in FWS are pressured to compromise recovery plans (or delay them) when significant economic impacts are feared. That is, they are pressured to ignore the recommendations of their own scientists or to pressure their scientists to change their recommendations.

S921 calls for better scientific info in decision making and specifically calls for independent scientific peer review of listings and recovery plans. I imagine that it is hoped that this greater level of review will make it less likely that scientific opinion will be intimidated by political pressure. I hope that is the case, but this greater certainty has several costs. Keep in mind that more review will slow the process and exacerbate the problem of being behind in listings. More review will cost money as well as time, since experts have to make a living too and cannot do this pro bono. Hence an appropriation sufficient to pay for this peer review must be forthcoming or the additional level of review should be dropped. We must be wary of placing a higher

and higher burden of proof on those trying to protect species since we seldom adequately fund the process of obtaining proof. Fewer species will be listed, but not because fewer need protection--only because, the higher the cost of listing them, the fewer we can afford to list. The effect is more lost species.

If we do require a higher level of scientific review than we should reduce the ability to challenge these listings on scientific grounds. Development interests complain that they need more lead time to plan how to avoid impacting endangered species, but when given advance warning of potential conflicts, they often concentrate on fighting listings or recovery plans rather than modifying their plans to fit in with these plans. If their challenges and delays were seldom successful, they would concentrate more on living with the recovery plans.

Problem 3) Half of listed endangered species occur only on private lands, yet there are no meaningful programs to encourage protection of these species on private lands. This problem could be addressed through a program that provides financial incentives to protect and enhance endangered species habitat on private lands. Property tax credits could be given for habitat improvement and for ESA compliance costs. Income tax deductions could be given for reduced revenue from lands that are managed for habitat. Severance taxes could be imposed for habitat conversion.

Problem 4) Many of the federal government's own programs contribute to species loss. The ESA should prohibit federal subsidies to activities that degrade habitat of species that are endangered, threatened or being considered for listing. It should also prohibit federal subsidies to activities that harm rare communities identified under the multispecies/ecosystem approach to biodiversity protection. This would mean that on most federal land there could be no below cost timber sales, no big water projects, and no low cost grazing permits for those who have poor grazing management records. Conservation groups should be allowed to lease grazing allotments and manage them for wildlife habitat.

I would also like to comment on recent joint FWS/NMFS policy directives which call for involving 'affected groups' in the development of recovery plans. I think this is appropriate (although those with an economic interest should NOT be involved in the listing process). However, like the proposed independent peer review, such involvement will slow the development of recovery plans and requires increased appropriations to minimize this delay. The ESA should ensure that the independent scientific review process occurs after these affected groups have worked on the recovery plan, i.e., the independent review process should approve the final plan. This joint FWS/NMFS policy is expected to require that recovery plans for species be completed within 30 months of the date of listing the species. Will this apply to multispecies listing also?

Once again thank you for your efforts to protect the earth's biodiversity on which human life and economic systems depend.



103D CONGRESS  
1ST SESSION

# S. 921

To reauthorize and amend the Endangered Species Act for the conservation of threatened and endangered species, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 6 (legislative day, APRIL 19), 1993

Mr. BAUCUS (for himself, Mr. CHAFEE, Mr. GRAHAM, Mr. MOYNIHAN, Mr. MITCHELL, Mr. LIEBERMAN, Mrs. BOXER, Mr. SARBANES, Mr. PELL, Mr. KENNEDY, Mr. LEAHY, Mr. KERRY, Mr. AKAKA, and Mr. DURENBERGER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To reauthorize and amend the Endangered Species Act for the conservation of threatened and endangered species, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Endangered Species  
5       Act Amendments of 1993”.

1 **SEC. 2. AMENDMENT OF ENDANGERED SPECIES ACT OF**

2 **1973.**

3 Except as otherwise expressly provided, whenever in  
4 this Act an amendment or repeal is expressed in terms  
5 of an amendment to, or repeal of, a section or other provi-  
6 sion, the reference shall be considered to be made to a  
7 section or other provision of the Endangered Species Act  
8 of 1973 (16 U.S.C. 1531 et seq.).

9 **SEC. 3. LISTING AND DELISTING IMPROVEMENTS.**

10 (a) **DELISTING.**—Section 4(a) (16 U.S.C. 1533(a))  
11 is amended by adding the following new paragraph:

12 “(4) The Secretary shall by regulation promulgated  
13 in accordance with subsection (b) determine whether any  
14 species is no longer an endangered species or a threatened  
15 species because of a change in the factors identified under  
16 paragraph (1).”.

17 (b) **STATE PARTICIPATION.**—Section 4(b)(1)(A) (16  
18 U.S.C. 1533(b)(1)(A)) is amended by inserting “soliciting  
19 and fully considering scientific and commercial data con-  
20 cerning the status of the species from the State agency  
21 in each appropriate State, if any, and” after “and after”.

22 (c) **LISTING PRIORITIES.**—Section 4(b)(1)(B) (16  
23 U.S.C. 1533(b)(1)(B)) is amended to read as follows:

24 “(B) In carrying out this section, the Secretary shall  
25 give consideration to species the conservation of which is  
26 most likely to reduce the need to list other species depend-

1 ent upon the same ecosystem. In addition, the Secretary  
2 shall give consideration to species which have been—

3 “(i) designated as requiring protection from un-  
4 restricted commerce by any foreign nation or pursu-  
5 ant to an international agreement; or

6 “(ii) identified as in danger of extinction, or  
7 likely to become so within the foreseeable future, by  
8 any State agency or by any agency of a foreign na-  
9 tion that is responsible for the conservation of fish  
10 or wildlife or plants.”.

11 (d) SCIENTIFIC PEER REVIEW.—Section 4(b)(5) (16  
12 U.S.C. 1533(b)(5)) is amended—

13 (1) by redesignating subparagraphs (D) and  
14 (E) as subparagraphs (E) and (F), respectively, and

15 (2) by inserting after subparagraph (C) the fol-  
16 lowing:

17 “(D) in the case of a regulation to implement  
18 a determination, request views on the proposed regu-  
19 lation from at least three independent referees who,  
20 through publication of peer-reviewed scientific lit-  
21 erature, have demonstrated relevant scientific exper-  
22 tise, if any person files within 30 days after the date  
23 of publication of general notice a written request de-  
24 tailing a substantial scientific basis for questioning

## 4

1 the sufficiency or accuracy of the available data rel-  
2 evant to the determination;”.

3 (e) COORDINATION OF CRITICAL HABITAT DESIGNA-  
4 TIONS AND RECOVERY PLANS.—Section 4(b)(6) (16  
5 U.S.C. 1533(b)(6)) is amended by adding at the end  
6 thereof the following:

7 “(D) If the Secretary, under subparagraph (C), ex-  
8 tends the one-year period, any final regulation designating  
9 critical habitat shall incorporate relevant information  
10 gathered during the development of the appropriate recov-  
11 ery plan under section 5.”.

12 (f) IDENTIFICATION OF DATA.—Section 4(b) (16  
13 U.S.C. 1533(b)) is amended by adding at the end the  
14 following:

15 “(9) The Secretary shall identify and publish in the  
16 Federal Register with a proposed rule under paragraph  
17 (1) of subsection (a) a description of any additional sci-  
18 entific and commercial data that would assist in the prepa-  
19 ration of a recovery plan under section 5 for the species  
20 to which the proposed rule relates.”.

21 **SEC. 4. RECOVERY PLANNING IMPROVEMENTS.**

22 (a) DEVELOPMENT AND IMPLEMENTATION OF RE-  
23 COVERY PLANS.—Section 5 (16 U.S.C. 1534) is  
24 amended—

(1) by redesignating subsections (a) and (b) in order as subsections (c) and (d); and

(2) by striking "LAND ACQUISITION" and all that follows through "SEC. 5." and inserting the following:

"RECOVERY OF ENDANGERED SPECIES AND  
THREATENED SPECIES

"SEC. 5. (a) RECOVERY PLANS.—

"(1) IN GENERAL.—

"(A) The Secretary shall, in cooperation with the State agency in each appropriate State, and on the basis of the best scientific and commercial data available, develop and implement plans (hereinafter in this subsection referred to as 'recovery plans') for the timely conservation of endangered species and threatened species listed pursuant to section 4 (hereinafter in this section referred to as 'covered species') and the habitats upon which such species depend, unless the Secretary finds that such a plan will not promote the conservation of a species.

"(B) The Secretary shall, consistent with subparagraph (A), seek to minimize adverse social and economic consequences that may result from implementation of recovery plans.



1           “(C) The Secretary shall develop and im-  
2           plement a recovery plan for a species—

3           “(i) by not later than December 31,  
4           1996, in the case of a species included in  
5           the list published under section 4(c) before  
6           January 1, 1996, and for which no recov-  
7           ery plan was developed before that date;  
8           and

9           “(ii) by not later than 18 months  
10          after the date on which a species is first  
11          included in a list published under section  
12          4(c), in the case of any species that is first  
13          included in such a list on or after January  
14          1, 1996.

15          “(2) PRIORITIES FOR DEVELOPING AND IMPLE-  
16          MENTING RECOVERY PLANS.—The Secretary shall  
17          give priority to—

18          “(A) the development and implementation  
19          of integrated, multi-species recovery plans for  
20          the conservation of threatened species, endan-  
21          gered species, or species which the Secretary  
22          has identified as candidates for listing under  
23          section 4 that are dependent upon a common  
24          ecosystem; and

“(B) those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from recovery plans, particularly those species whose conservation is, or may be, in conflict with construction or other development projects or other forms of economic activity.

“(3) CONTENTS.—The Secretary shall to the maximum extent practicable incorporate in each recovery plan—

“(A) a description of such site-specific management actions as may be necessary to achieve the goal of the recovery plan for the conservation and survival of the covered species, including actions to maintain or restore ecosystems upon which the covered species are dependent;

“(B) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4, that the covered species be removed from the list;

“(C) estimates of the time required and the cost to carry out those measures needed to achieve the goal of the recovery plan and to achieve intermediate steps toward that goal; ...

1           “(D) a description of actions that will be  
2 taken to minimize adverse social or economic  
3 impacts that may result from implementation of  
4 the recovery plan;

5           “(E) strategies that utilize existing Fed-  
6 eral lands, to the extent that such lands are  
7 available, to promote the conservation of the  
8 covered species;

9           “(F) an identification of the measures,  
10 which if taken by Federal agencies, would con-  
11 tribute to the conservation of the covered spe-  
12 cies;

13           “(G) an identification of the specific areas  
14 or circumstances, if any, in which the develop-  
15 ment and implementation of conservation plans  
16 under section 10(a)(2) would contribute to the  
17 conservation of the covered species;

18           “(H) an identification of the specific areas  
19 of circumstances, if any, in which entering into  
20 agreements with private landowners under sec-  
21 tion 14 would promote the conservation of the  
22 covered species; and

23           “(I) an identification of opportunities to  
24 cooperate with municipalities, political subdivi-  
25 sions of State, and other persons in actions

1 which would contribute to the conservation of  
2 the covered species.

3 “(4) PUBLIC REVIEW AND COMMENT.—

4 “(A) The Secretary shall, prior to final ap-  
5 proval of a new or revised recovery plan—

6 “(i) provide public notice and an op-  
7 portunity for public review and comment  
8 on the plan; and

9 “(ii) consider all information pre-  
10 sented during the public comment period.

11 “(B) Each Federal agency shall, before im-  
12 plementing a new or revised recovery plan, con-  
13 sider all information presented during the pub-  
14 lic comment period under subparagraph (A).

15 “(5) PUBLIC OUTREACH.—

16 “(A) The Secretary, in developing and im-  
17 plementing recovery plans, may procure the  
18 services of appropriate public and private agen-  
19 cies and institutions and other qualified per-  
20 sons.

21 “(B) Recovery teams appointed pursuant  
22 to this subsection shall not be subject to the  
23 Federal Advisory Committee Act.

24 “(C) The Secretary shall in cooperation  
25 with the States solicit the participation of rel-

## 10

1           evant Federal agencies and appropriate persons  
2           to identify matters under paragraph (3)(E),  
3           (F), (G), (H), and (I).

4           “(6) REPORTS.—The Secretary shall report  
5           every two years to the Committee on Environment  
6           and Public Works of the Senate and the Committee  
7           on Merchant Marine and Fisheries of the House of  
8           Representatives on the status of efforts to develop  
9           and implement recovery plans for all species listed  
10          pursuant to section 4 and on the status of all species  
11          for which such plans have been developed.

12          “(b) MONITORING.—

13           “(1) IN GENERAL.—The Secretary shall imple-  
14          ment a system in cooperation with the States to  
15          monitor effectively for not less than 5 years the sta-  
16          tus of all species which have been brought to the  
17          point at which the measures provided pursuant to  
18          this Act are no longer necessary and which, in ac-  
19          cordance with the provisions of section 4, have been  
20          removed from either of the list published under sec-  
21          tion 4(c).

22           “(2) PREVENTING RISKS TO RECOVERED SPE-  
23          CIES.—The Secretary shall make prompt use of the  
24          authority under section 4(b)(7) to prevent a signifi-



1 cant risk to the well-being of any recovered species  
2 referred to in paragraph (1).”.

3 (b) EXISTING RECOVERY PLANS.—

4 (1) CONTINUED EFFECT OF EXISTING PLANS.—

5 Each recovery plan developed under the Endangered  
6 Species Act of 1973 before the date of the enact-  
7 ment of this Act shall continue in effect until revised  
8 by the Secretary (as that term is defined in section  
9 3 of the Act) in accordance with the Act as amended  
10 by this Act.

11 (2) REVISIONS.—The Secretary (as that term is  
12 defined in section 3 of the Endangered Species Act  
13 of 1973) may revise each recovery plan developed  
14 under the Endangered Species Act of 1973 before  
15 the date of the enactment of this Act so as to con-  
16 form to section 5 of that Act, as amended by this  
17 Act, giving priority to recovery plans whose revision  
18 would provide the greatest benefit to species listed  
19 under section 4 of that Act and species which the  
20 Secretary has identified as candidates for listing  
21 under section 4 of that Act.

22 (c) CONFORMING AMENDMENTS.—

23 (1) The table of contents in the first section is  
24 amended by striking the item relating to section 5  
25 and inserting the following:

## 12

1           (2) Section 4 (16 U.S.C. 1533) is amended—

2                   (A) by striking subsections (f) and (g);

3                   (B) in subsection (h)(4) by striking “sub-  
4           section (f) of this section” and inserting in lieu  
5           thereof “section 5”;

6                   (C) by redesignating subsection (h) as sub-  
7           section (f); and

8                   (D) by redesignating subsection (i) by  
9           striking “(i)” and inserting the following: “(g)  
10          RESPONSE TO STATE COMMENTS.—”.

11           (3) Section 6(d) (16 U.S.C. 1535(d)) is amend-  
12          ed by striking “Section 4(g)” and inserting in lieu  
13          thereof “Section 5(b)”.

14           (4) Section 7(a)(1) of the Land and Water  
15          Conservation Fund Act of 1965 (16 U.S.C. 4601-  
16          9(a)(1)) is amended by striking “Section 5(a)” and  
17          inserting in lieu thereof “Section 5(c)”.

18   **SEC. 5. IMPROVED COOPERATION WITH THE STATES.**

19          Section 6(a) (16 U.S.C. 1535(a)) is amended by add-  
20          ing at the end thereof the following sentence: “In cooper-  
21          ating with State agencies in carrying out this Act, the Sec-  
22          retary shall not be subject to the Federal Advisory Com-  
23          mittee Act.”.

1 **SEC. 6. ACTIONS ON FEDERAL LANDS TO PREVENT LISTING**  
2 **OF SPECIES.**

3 (a) POLICY OF CONGRESS.—Section 2(c)(1) (16  
4 U.S.C. 1531(c)(1)) is amended to read as follows:

5 “(1) It is further declared to be the policy of  
6 Congress that all Federal departments and agencies  
7 shall conserve endangered species, threatened spe-  
8 cies, species which have been proposed for listing,  
9 and species which the Secretary has identified as  
10 candidates for listing under section 4 and shall uti-  
11 lize their authorities in furtherance of this policy  
12 and the purposes of this Act.”.

13 (b) FEDERAL AGENCY AGREEMENTS FOR THE CON-  
14 SERVATION OF CANDIDATE SPECIES.—Section 7(a)(1)  
15 (16 U.S.C. 1536(a)(1)) is amended by inserting “(A)”  
16 after “(1)” and by adding the following new subpara-  
17 graph:

18 “(B) The head of each Federal agency respon-  
19 sible for the management of lands and waters—

20 “(i) shall, by not later than December 31,  
21 1994, prepare and provide to the Secretary an  
22 inventory of endangered species, threatened  
23 species, species which have been proposed for  
24 listing, and species which the Secretary has  
25 identified as candidates for listing under section

1           4, which are located on lands and waters within  
2           the jurisdiction of the agency;

3           “(ii) shall, by not later than December 31,  
4           1995, identify measures to be taken on lands  
5           and waters within the jurisdiction of the agency  
6           to conserve species which the Secretary has  
7           identified as candidates for listing under section  
8           4; and

9           “(iii) may enter into agreements with the  
10          Secretary to further the conservation of any  
11          species which the Secretary has identified as  
12          candidates for listing under section 4.”.

13   **SEC. 7. CONSULTATION ON FEDERAL ACTIONS ABROAD.**

14          Section 7(a) (16 U.S.C. 1536(a)) is amended by add-  
15          ing at the end the following new paragraph:

16          “(5) Except as provided in subsection 7(j), the provi-  
17          sions of this section are applicable to all Federal agencies  
18          and agency actions, including extraterritorial actions and  
19          actions with extraterritorial effects.”.

20   **SEC. 8. IMPROVED FEDERAL AGENCY COORDINATION.**

21          Section 7(a) (16 U.S.C. 1536(a)) is amended by add-  
22          ing at the end thereof the following:

23          “(6) CONSOLIDATION OF CONSULTATIONS AND CON-  
24          FERENCES.—

“(A) Consultations and conferences under this section between the Secretary and a Federal agency may, if approved by the Secretary, encompass a number of related or similar agency actions to be undertaken within a particular geographic area or ecosystem.

“(B) The Secretary may consolidate requests for consultations or conferences from various Federal agencies whose proposed actions may affect endangered species, threatened species, or species which have been proposed for listing under section 4, that are dependent upon the same ecosystem.”.

**SEC. 9. INCENTIVES FOR CONSERVATION OF CANDIDATE  
AND OTHER SPECIES ON STATE AND PRIVATE  
LANDS.**

(a) CONSERVATION PLANNING.—Section 13 (87 Stat. 901; relating to conforming amendments) is amended to read as follows:

**“CONSERVATION PLANNING**

**“SEC. 13. (a) CONSERVATION PLANNING FOR CANDIDATE SPECIES.—**

**“(1) DEVELOPMENT OF PLANS.—**

“(A) Any State, county, municipality, political subdivision of a State, or other person, may develop a plan for the conservation of any species which has been proposed for listing or



1 identified by the Secretary as a candidate for  
2 listing under section 4.

3 “(B) A plan prepared under subparagraph  
4 (A) shall cover an area that, alone or when con-  
5 sidered in association with nearby lands dedi-  
6 cated to conservation, is sufficiently large in  
7 size to encompass adequate suitable habitat  
8 within which the covered species can be main-  
9 tained over the long-term.

10 “(2) PERMIT ISSUANCE.—If a plan developed  
11 pursuant to paragraph (1) specifies the information  
12 required under section 10(a)(2)(A), and if, after op-  
13 portunity for public comment thereon, the Secretary  
14 makes the findings required under section  
15 10(a)(2)(B) the Secretary shall, upon receipt of such  
16 assurances as the Secretary may require that the  
17 plan will be implemented, issue a permit which shall  
18 be treated, upon the listing under section 4 of any  
19 species for which the plan was developed, as a per-  
20 mit issued pursuant to section 10(a)(1)(B).

21 “(3) REVIEW UPON LISTING.—Upon the listing  
22 under section 4 of a species for which a permit is  
23 issued under paragraph (2), the Secretary shall—

1           “(A) review the terms and implementation  
2           of each permit issued under paragraph (3) for  
3           that species;

4           “(B) determine whether each of those per-  
5           mittees has complied with the terms of their  
6           permit; and

7           “(C) suspend the permit of any of those  
8           permittees that is determined under subpara-  
9           graph (B) to have not complied with their per-  
10          mit.

11          “(b) FEDERAL ASSISTANCE TO STATE AND LOCAL  
12          GOVERNMENTS FOR DEVELOPMENT OF PLANS.—

13           “(1) ESTABLISHMENT OF HABITAT CONSERVA-  
14          TION PLANNING FUND.—The Secretary shall estab-  
15          lish a Habitat Conservation Planning Fund (herein-  
16          after referred to in this subsection as ‘Fund’) which  
17          shall—

18           “(A) consist of all sums appropriated pur-  
19          suant to section 15(d), and

20           “(B) be administered by the Secretary as  
21          a revolving fund.

22           “(2) AUTHORITY TO MAKE GRANTS OR AD-  
23          VANCES FROM THE FUND.—The Secretary is author-  
24          ized to make a grant or interest-free advance from  
25          the Fund to any State, county, municipality, or po-

1        litical subdivision of any State to assist in the devel-  
2        opment of a plan under this section or section  
3        10(a)(2). A grant or advance under this paragraph  
4        may not exceed the total financial contribution of  
5        the other parties participating in development of the  
6        plan.

7        “(3) CRITERIA FOR GRANTS AND ADVANCES  
8        FROM THE FUND.—In making grants or advances  
9        from the fund, the Secretary shall consider the num-  
10       ber of species for which the plan is to be developed,  
11       the commitment to participate in the planning proc-  
12       ess from a diversity of interests (including local gov-  
13       ernmental, business, environmental, and landowner  
14       interests), the likelihood of success of the planning  
15       effort, and other factors as the Secretary deems ap-  
16       propriate.

17       “(4) REPAYMENT OF ADVANCES FROM THE  
18       FUND.—

19       “(A) Except as provided in subparagraph  
20       (B), sums advanced from the Fund shall be re-  
21       paid within 10 years after the date of the ad-  
22       vance.

23       “(B) Sums advanced under this subsection  
24       for development of a plan shall be repaid within  
25       4 years after the date of the advance if—

## 19

1           “(i) no plan is developed within 3  
2           years after the date of the advance; or

3           “(ii) in the case of an advance for the  
4           development of a plan under section  
5           10(a)(2), no permit is issued under section  
6           10(a)(1)(B) based on the plan within three  
7           years after the date of the advance.

8           “(C) Sums received by the United States  
9           as repayment of advances from the Fund shall  
10          be credited to the Fund and available for fur-  
11          ther advances in accordance with this sub-  
12          section without further appropriation.”.

13          “(b) CONFORMING AMENDMENT.—The table of con-  
14          tents in the first section is amended by striking the item  
15          relating to section 13 and inserting the following:

          “Sec. 13. Conservation planning.”.

16          (c) MITIGATION.—Section 10(a)(2)(A)(ii) (16 U.S.C.  
17          1539(a)(2)(A)(ii) is amended to read as follows:

18               “(ii) what measures, such as conservation  
19               easements, land acquisition, regulatory controls,  
20               exotic species controls, and active habitat man-  
21               agement, the applicant will take to minimize  
22               and mitigate those impacts and the funding  
23               that will be available to implement those meas-  
24               ures;”.

1 **SEC. 10. FEDERAL ASSISTANCE TO HELP PRIVATE LAND-**  
2 **OWNERS CONSERVE SPECIES,**

3 (a) INCENTIVES FOR PRIVATE LANDOWNERS.—Sec-  
4 tion 14 (87 Stat. 903; relating to a repeal) is amended  
5 to read as follows:

6 “INCENTIVES FOR PRIVATE LANDOWNERS TO ASSIST RE-  
7 COVERY OF ENDANGERED SPECIES, THREATENED  
8 SPECIES, AND CANDIDATE SPECIES

9 “SEC. 14. (a) ASSISTANCE AGREEMENTS.—The Sec-  
10 retary may, in cooperation with the State agency in each  
11 appropriate State and subject to the availability of appro-  
12 priations under section 15(e), enter into an agreement  
13 with any person who is a private landowner, under  
14 which—

15 “(1) the person agrees to carry out on land  
16 they own activities that the Secretary determines  
17 will promote—

18 “(A) the conservation of an endangered  
19 species or a threatened species pursuant to a  
20 recovery plan; or

21 “(B) the conservation of a species which  
22 the Secretary has identified to be a candidate  
23 for listing under section 4;

24 “(2) the Secretary agrees to pay to the person  
25 such amount as may be agreed by the person and  
26 the Secretary.



1       “(b) PROHIBITION ON ASSISTANCE FOR CERTAIN  
2 REQUIRED ACTIVITIES.—The Secretary may not pay any  
3 amount as assistance under this section for any action  
4 that is—

5           “(1) required under a permit issued pursuant  
6 to subparagraph 10(a)(2)(B);

7           “(2) a condition of any other permit issued  
8 under this Act; or

9           “(3) otherwise required under this Act or any  
10 other Federal law.

11       “(c) ENSURING IMPLEMENTATION OF AGREE-  
12 MENTS.—The Secretary shall be responsible for ensuring  
13 that the terms of the agreements entered into under this  
14 section are carried out.

15       “(d) TECHNICAL ASSISTANCE.—The Secretary may  
16 provide, to a person who enters into an agreement under  
17 this section, technical assistance in the implementation of  
18 the activities under subsection (a)(1).”.

19       (b) CONFORMING AMENDMENT.—The table of con-  
20 tents in the first section is amended by striking the item  
21 relating to section 14 and inserting the following:

“Sec. 14. Incentives for private landowners to assist recovery of endangered spe-  
cies, threatened species, and candidate species.”.

22       (c) REPORT ON INCENTIVES FOR CONSERVATION OF  
23 SPECIES.—Within 12 months after the date of enactment  
24 of this Act, the Secretary, in consultation with the Sec-

1 retary of the Treasury, shall submit to the Senate Com-  
2 mittee on Environment and Public Works and the House  
3 Committee on Merchant Marine and Fisheries a report  
4 containing—

5           (1) a compilation and analysis of existing and  
6 potential Federal expenditures, financial assistance,  
7 and tax provisions which have the effect of encour-  
8 aging private landowner conservation of the habitat  
9 of endangered species, threatened species, or species  
10 which the Secretary has identified to be a candidate  
11 for listing under section 4;

12           (2) a compilation and analysis of existing and  
13 potential Federal expenditures, financial assistance,  
14 and tax provisions which have the effect of discour-  
15 aging private landowner conservation of the habitat  
16 of endangered species, threatened species, or species  
17 which the Secretary has identified to be a candidate  
18 for listing under section 4;

19           (3) a compilation and analysis of Federal statu-  
20 tory and regulatory mechanisms, including expendi-  
21 tures and financial assistance, which have the effect  
22 of discouraging the conservation of endangered spe-  
23 cies, threatened species, or species which the Sec-  
24 retary has identified to be a candidate for listing  
25 under section 4 of the Endangered Species Act; and

(4) recommendations based on the compilations and analyses under paragraphs (1), (2) and (3) which would promote conservation of endangered species, threatened species, or species which the Secretary has identified to be a candidate for listing under section 4.

**SEC. 11. IMPROVING INTERNATIONAL CONSERVATION OF SPECIES.**

(a) WESTERN HEMISPHERE CONVENTION.—Section 8A(e) (16 U.S.C. 1537a(e)) is amended—

(1) in paragraph (2) by redesignating subparagraphs (A), (B), and (C) in order as subparagraphs (C), (D), and (E); and

(2) by inserting before paragraph (2)(C), as so redesignated, the following:

“(A) placement of permanent United States liaisons in contracting party nations or in regions representing several contracting party nations, including Mexico, Central America, northern South America, Brazil, southern South America, and the Caribbean;

“(B) cooperation with contracting parties and appropriate international organizations for the purposes of—



1                   “(i) convening a conference of the parties  
2                   and appropriate technical meetings on coopera-  
3                   tive bilateral and multilateral actions to imple-  
4                   ment the Western Convention, and

5                   “(ii) establishing and supporting a Perma-  
6                   nent Office of Western Convention;”;

7                   (3) in paragraph (2)(D), as so redesignated, by  
8                   striking “and” after the semicolon;

9                   (4) in paragraph (2)(E), as so redesignated, by  
10                  striking the period and inserting “; and”;

11                  (5) by adding at the end of paragraph (2) the  
12                  following:

13                  “(F) implementation of cooperative measures to  
14                  conserve sensitive and threatened habitats and  
15                  ecosystems.”; and

16                  (6) in paragraph (3) by striking “1985,” and  
17                  inserting in lieu thereof “1995, and every three  
18                  years thereafter,”.

19                  (b) REGULATIONS TO IMPLEMENT CONVENTION ON  
20                  INTERNATIONAL TRADE IN ENDANGERED SPECIES OF  
21                  WILD FAUNA AND FLORA.—Section 11(f) (16 U.S.C.  
22                  1540(f)) is amended in the first sentence by striking “en-  
23                  force this Act,” and inserting “enforce this Act and to  
24                  carry out the Convention and resolutions adopted under  
25                  the Convention by the parties to the Convention,”.

1 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

2 Section 15 (16 U.S.C. 1542) is amended to read as  
3 follows:

4 “AUTHORIZATION OF APPROPRIATIONS

5 SEC. 15. (a) IN GENERAL.—In addition to amounts  
6 authorized under section 6(i) and subsections (b), (c), (d),  
7 and (e) of this section, there are authorized to be  
8 appropriated—

9 “(1) to the Secretary of the Interior for carry-  
10 ing out functions of the Secretary of the Interior  
11 under this Act \$110,000,000 for fiscal year 1994,  
12 \$120,000,000 for fiscal year 1995, \$130,000,000 for  
13 fiscal year 1996, \$140,000,000 for fiscal year 1997,  
14 \$150,000,000 for fiscal year 1998, and  
15 \$160,000,000 for fiscal year 1999;

16 “(2) to the Secretary of Commerce for carrying  
17 out functions of the Secretary of Commerce under  
18 this Act \$15,000,000 for fiscal year 1994,  
19 \$20,000,000 for fiscal year 1995, \$25,000,000 for  
20 fiscal year 1996, \$30,000,000 for fiscal year 1997,  
21 \$35,000,000 for fiscal year 1998, and \$40,000,000  
22 for fiscal year 1999; and

23 “(3) to the Secretary of Agriculture for carry-  
24 ing out functions of the Secretary of Agriculture  
25 under this Act \$4,000,000 for each of fiscal years  
26 1994 through 1999.



1       “(b) EXEMPTIONS FROM ACT.—There are authorized  
2 to be appropriated to the Secretary of the Interior for car-  
3 rying out functions of the Secretary of the Interior and  
4 the Endangered Species Committee under section 7(e),  
5 (g), and (h) \$625,000 for each of fiscal years 1994  
6 through 1999.

7       “(c) CONVENTION IMPLEMENTATION.—There are au-  
8 thorized to be appropriated to the Secretary of the Interior  
9 for carrying out section 8A(e) \$1,000,000 for each of fis-  
10 cal years 1994 through 1999; such sums shall remain  
11 available until expended.

12       “(d) HABITAT CONSERVATION PLANNING FUND.—  
13 To assist in the development of plans under sections  
14 10(a)(2) and 13, there are authorized to be appropriated  
15 to the Secretary of the Interior \$20,000,000, which shall  
16 be deposited into the Habitat Conservation Planning Fund  
17 established under section 13(b) and which shall remain  
18 available until expended.

19       “(e) PRIVATE ASSISTANCE.—There are authorized to  
20 be appropriated to the Secretary of the Interior for carry-  
21 ing out section 14 \$25,000,000 for each of fiscal years  
22 1994 through 1999.

23       “(f) AVAILABILITY.—Amounts appropriated under  
24 the authority of this section shall remain available until  
25 expended.”.



